THE RISE OF COLLEGES

The Requisites of Knowledge

A quick mind, zeal, poverty, foreign land,
A professor's inspiration, and of life a long span.

ذَكَاءٌ وَحِرْصٌ وَٱفْتِقَارٌ وَغُرْبَةٌ
وَتَلْقِينُ أُسْتَاذٍ وَطُولُ زَمَانِ

Juwaini of Nishapur (d.1085)
(*Dhail*, (*Z*), folio 13a)

A humble mind, zeal for learning, a quiet life,
Silent investigation, poverty, a foreign land.

Mens humilis, studium quaerendi, vita quieta,
Scrutinium tacitum, paupertas, terra aliena.

Bernard of Chartres (d.c.1130)
(*Policraticus*, VII, 13)

[redacted] [redacted]

TO THE MEMORY OF MY WIFE MARGARET

whose interest in Chaucer's Canterbury Tales
first inspired the comparative aspect
of my studies

THE RISE OF COLLEGES

INSTITUTIONS OF LEARNING IN ISLAM AND THE WEST

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PREFACE

This study was undertaken in order to achieve a better understanding of a pivotal period in Islamic intellectual history. Intellectual movements become more intelligible when studied in close reference to the forces which produced them. The form and content of intellectual works are intelligible in the extent to which the methods of instruction, study and composition are understood in their essential details.

This book is not a survey of Islamic education. Many monographic studies must yet be made available before such a survey could be successfully achieved. Rather an attempt is made here to concentrate on a particular institution of learning, the Muslim college, especially in its madrasa form, and on the scholastic method that was its product. Although references are made to other periods and places, my main concern is with the eleventh century in Baghdad, the time and the place of the flourishing of the madrasa and the scholastic method, both of which had developed in the previous century. I hope to show that the madrasa was the embodiment of Islam's ideal religious science, law, and of Islam's ideal religious orientation, traditionalism; and that law and traditionalism combined to produce the scholastic method which was the peculiar product of the Middle Ages.

The history of Islamic institutions of learning was inextricably linked with Islam's religious history, and their development was linked with the interaction of the religious movements, legal and theological. The first three chapters of this book treat therefore of this interaction which led to the development of the college, informed the methods of instruction and shaped the scholastic community. Chapter four treats of the many parallels between Islam's institutions and those which developed later in the Christian West. A review of selected previous original scholarship regarding the madrasa is given in an appendix.

Arabic terms and proper names are given without diacritics or italics; they are given with diacritics and in systematic transliteration in the general index. On the other hand, Arabic phrases and sentences are given in transliteration and with diacritics. Titles of books are italicized, but not the Arabic or Latin terms and phrases. The term Mosque, capitalized, refers to the Friday or Congregational Mosque; the non-congregational mosque is rendered with a small m. Dates are normally given for both the Muslim or Christian eras separated by a

diagonal line. When only one date is given it is normally the Christian date, otherwise it is followed by the letter 'H.' for hijra. Webster's *Third New International Dictionary* contains many Arabic words the forms of which have been used, and others added by analogy though not in strict conformity with systematic transliteration; for instance madhab for madhhab, and, by analogy, mashad for mashhad. Names of persons are normally identified with their dates of death in the general index, and when first mentioned in the text, so as to facilitate their being readily located in biographical works. All references are normally abbreviated to one word or to initials in the footnotes, and are fully identified in the bibliography, which contains only those works actually cited in the footnotes. The following abbreviations have also been used: b. = ibn, born; c. = circa; d. = died; fl. = floruit; fol. = folio (a = recto; b = verso); pl. = plural; sg., sing. = singular. In the footnotes the numbers enclosed in parentheses following the page number indicates the line number(s) on the page cited.

I wish to express my heartfelt gratitude to Professor W. Montgomery Watt who invited me in 1968 to write a book on Muslim education for the series of Islamic Surveys of which he is the General Editor; and to Mr A.R. Turnbull, Secretary to the Edinburgh University Press for his continued interest when the work had taken a different direction. My thanks are also due to Miss Patricia K. Duncan of the editorial staff for being most helpful in the preparation of the manuscript for the press. I also take this opportunity of thanking the following publishers for the use of some of my previous studies: The Cambridge University Press, The Mediaeval Academy of America, the Paul Geuthner Librairie Orientale (Paris), The State University of New York Press (Albany, N.Y.), the University of Louvain and the University of Louvain-La-Neuve.

Philadelphia May, 1981

Chapter 1

INSTITUTIONS

I. THE RISE OF THE SCHOOLS OF LAW

1. School of Law (Madhab) and College of Law (Madrasa)

A distinction should be made, at the outset, between two terms: 'schools of law', and 'colleges of law'. The latter term is applied to the institutions, the buildings in which instruction took place. The former term designates the schools of jurisprudence: (1) those groups of jurisconsults who shared the experience of belonging to the same locality, and were called 'geographical schools'; or (2) those groups who were designated as followers of a leading jurisconsult, and were called 'personal schools'.

In the history of Islamic institutions the development of the schools of law presents a number of problems, including the very term translated here as 'school', namely madhab. This term has also been translated as 'sect', and 'rite'. The term 'sect', however, is applied to a dissenting religious body, heretical in the eyes of other members within the same communion. That is not the case with the Sunni madhabs, all of which are regarded equally as orthodox. The term 'rite' applies to a division of the Christian church as determined by liturgy. As such, it cannot be applied to madhab. For unlike a transfer from one rite to another in Christianity, a transfer requiring certain formalities, the transfer in Islam is made from one madhab to another without any formalities whatsoever. The term 'school' is the most acceptable, for lack of a better term; it offers the least difficulty. In using it one must keep in mind what the late Professor Schacht said about the early schools: that the term 'ancient schools of law' implies neither any definite organization, nor a strict uniformity of doctrine within each school, nor any formal teaching, nor any official status, nor even the existence of a body of law in the Western meaning of the term.[1]

The phenomenon of the schools of law raises certain problems that have not yet been adequately answered, or not answered at all. Why were there schools of law in a system that was profoundly individualistic? Why was there a dramatic diminution in the number of personal schools after they had experienced phenomenal proliferation? What

was the nature of the relationship between the schools of law and the theological movements?

2. Schools in an Individualistic System of Law

Why should there have been a school of law in a system that advocated the utmost scholarly exertion (ijtihad) on the part of the individual jurisconsult with a view to arriving at a personal opinion? A hadith, the authority for which is attributed to the Prophet himself, encouraged the faqih to practise ijtihad. According to this hadith the jurisconsult received a reward in the world to come, even if mistaken; and if right, he was doubly rewarded. The encouragement to practise ijtihad was such that he was rewarded regardless of the result. He performed this task alone; he did not act as part of a committee or organization of jurisconsults, though his opinion could be in agreement with that of another, or others, on the same question.

3. Emergence of Four Schools

Joseph Schacht has written about the ancient schools of law known by a geographical designation; for instance, the Kufians, the Medinians, the Syrians. Then beginning in the early part of the second century (eighth of our era), groups within these ancient schools formed themselves around individual masters; for instance, the 'disciples of Abu Hanifa' within the schools of Kufa; the 'disciples of Malik' within that of Medina; and the 'disciples of al-Auza'i' within that of Syria. By the middle of the third / ninth century, the ancient schools had transformed themselves into 'personal' schools.[2]

Some five hundred personal schools of law are said to have disappeared by the beginning of the third / ninth century.[3] These schools continued to decrease in number until only the four Sunni schools which have survived down to our time remained. The date of the crystallization of these four schools is given as being around the end of the seventh / thirteenth century. Maqrizi says that this process began in 665 / 1267 when only four qadis were appointed in Cairo belonging to these four schools and all other schools were disavowed.[4] Schacht echoes this opinion by giving the approximate date of the survival of the four Sunni schools as being around 700 / 1300.[5]

The four surviving 'personal' schools of law are those of Abu Hanifa (d.150 / 767), Malik (d.179 / 795), Shafi'i (d.204 / 820) and Ibn Hanbal (d.241 / 855), and are named, after their eponyms, the Hanafi, Maliki, Shafi'i and Hanbali schools of law. The first two developed from the ancient geographically designated schools of law. Of the well-known early personal schools, no longer in existence, there were those of al-Auza'i (d.157 / 774) and Sufyan ath-Thauri (d.161 / 778), both of whom were Syrians.

Among the schools that came into existence as personal schools ab initio, only the Shafi'i and Hanbali survived, others, well known, being the Thauri, named after Abu Thaur (d.240 / 854), the Zahiri,

named after Dawud b. Khalaf az-Zahiri (d.269/882) and the Jariri, named after Ibn Jarir at-Tabari (d.310/923), the celebrated historian-jurisconsult. There were also two well-known personal schools, themselves offshoots of other personal schools: the school of Abu Yusuf (d.181/797), a follower of Abu Hanifa,[6] and the school of Ibn Hazm (d.456/1064), a follower of Dawud az-Zahiri.[7]

Why, after experiencing incredible proliferation, did the schools diminish in number to four? Why did they become fixed at four with the Hanbali schools the last to survive, rather than the Zahiri or the Jariri?

4. Relationship between the Schools of Law and Theological Movements

Some historical sources, in treating of the schools of law, have classified them according to terms applied to theological movements. They have classified them as traditionalist, the term for which is ahl al-hadith, or as rationalist, the term for which is ahl ar-ra'y; or under the variations for these terms, namely, ashab al-hadith and ashab ar-ra'y. Besides the term ahl ar-ra'y or ashab ar-ra'y for the rationalists, other terms were used, such as ahl al-kalam, ahl an-nazar, and ahl al-qiyas.

In listing the various personal schools of law under one or other of these terms, the partisans of hadith or the partisans of ra'y, the sources are not consistent. Ibn Qutaiba (d.276/889)[8] lists all the eponyms of the schools of law, except Ahmad b. Hanbal, as belonging to the rationalist movement of ashab ar-ra'y; and when he deals with ashab al-hadith, or traditionalists, he cites only individual tradition-experts. On the other hand, the tenth-century geographer al-Maqdisi considers the followers of Ahmad b. Hanbal, along with those of al-Auza'i (d.157/774), Ibn Mundhir (d.236/850) and Ishaq b. Rahawaih (d.238/852), as ashab al-hadith, as though they did not belong to the schools of law (madhahib al-fiqh), under which designation he cites the Hanafis, Malikis, Shafi'is, and Zahiris.[9] Elsewhere in the same work, al-Maqdisi cites the Shafi'is, in contrast with the Hanafis, as ashab al-hadith;[10] and in yet another passage of the same author,[11] Shafi'i and Abu Hanifa are considered as belonging to ra'y in opposition to Ahmad b. Hanbal.

Shahrastani classifies Malik, Shafi'i, Ahmad b. Hanbal, and Dawud b. Khalaf as ashab al-hadith, and only the school of Abu Hanifa as ashab ar-ra'y.[12] Ibn Khaldun also has this classification, but places Dawud at the head of a separate third class.[13]

Ibn an-Nadim (fl.377/987)[14] and al-Maqdisi (fl.375/985)[15] classify the Hanbalis, Auza'is, and Thauris as the most important schools of law of the traditionalists (ashab al-hadith). The schools of jurisprudence mentioned at the beginning of the fourth / tenth century are the Shafi'i, Maliki, Thauri, Hanafi, and Dawudi, according to Subki.[16] At the end of that century, according to al-Maqdisi,[17] they

are the Hanafi, Maliki, Shafi'i, and Dawudi. The Hanbalis are not cited as a school of law by these sources.

5. SOME OF THE ANSWERS GIVEN AND THEIR INADEQUACY

Some reasons have been given to explain why certain schools survived, while others disappeared. Snouck Hurgronje speaks of strategic geographical location and of the prince's favour as factors in the schools' survival. Others have subscribed to this theory, including Joseph Schacht. Snouck Hurgronje further cites the year A.H. 500 (A.D. 1106) as the approximate date for the emergence of the four Sunni schools of law. On the other hand, Schacht cites the year 700/1300 as the approximate date, both for the emergence of these schools and for the 'closing of the door of *ijtihād*'.

It is, of course, impossible to establish the date of foundation of a school of law; impossible also to establish a date of disappearance. For there was never an act of foundation; nor was there ever an act of dissolution. The term madhab, in ordinary language, means a way or direction to follow; and technically, an opinion, a thesis. A thesis had to be defended in order to survive. Shafi'i praises Abu 'l-Laith as a great jurisconsult and his madhab as a strong one that would have survived but for the lack of support by his disciples: lam yaqūmū bihī aṣḥābuh. Dates can only be determined approximately. The last representative of the Zahiri school died in Baghdad around 475/1082. This means that this school in Baghdad had already lost its importance sometime before. Schools did not suddenly disappear from the scene: they died a slow death, as its defenders diminished in number until none were left who were capable of defending the doctrines of its recognized representatives.

Biographers of jurisconsults often point out that a certain jurisconsult was responsible for bringing the doctrines of his school of law to a certain locality. It takes more than one jurisconsult to do this successfully; for it is necessary not only to introduce the doctrines, but also to see that they survive by defending them against rival doctrines, and propagating them through teaching and the issuing of legal opinions.

Thus Ziyad b. 'Abd ar-Rahman, known as Shabtun (d.193/809) is said to have been 'the first to introduce the legal doctrines of Malik in Andalusia' (auwalu man adkhala fiqha Mālik al-Andalus). Others are said to have 'spread' the doctrines of their respective schools. Thus Sahnun (d.240/854) spread Malik's doctrines in North Africa ('anhū 'ntashara fiqhu Mālik fī 'l-maghrib),[18] and Qadi Sulaiman b. Salim, a disciple of Sahnun, did the same in Sicily ('anhū 'ntashara 'l-fiqhu bi-Siqilliya).[19] Abu Hamid al-Isfara'ini (d.406/1015) is said to have 'filled the earth with disciples' (ṭabbaqa 'l-arḍa bi 'l-aṣḥāb);[20] or that they propagated doctrines through teaching.[21]

After the notice on Ishaq b. Rahawaih, Shirazi says: 'Jurisprud-

ence, in all the regions of Islam, ended up with the followers of Shafi'i, Abu Hanifa, Malik, Ahmad [b. Hanbal] and Dawud [az-Zahiri]. It is on their authority that jurisprudence was propagated everywhere, "*and leading jurisconsults of their respective schools advocated their doctrines and legal opinions*"' (wa-qāma bi-nuṣrati madhāhibihim a'immatun yunsabūna ilaihim wa-yanṣurūna aqwālahum).[22] Thus Shirazi lays stress on the importance of the continued activity of the jurisconsults and their advocacy of the doctrines of the Imams with whom they were affiliated.

Shafi'i is shown to have been very much aware of the importance of his disciples in the propagation of his doctrines. Of al-Muzani (d.264/878) he is quoted as saying: 'he is the advocate of my doctrine' (nāṣir madhhabī);[23] of Rabi' b. Sulaimān (d.270/883): 'he is the transmitter of my teaching' (rāwiyatī);[24] of Buwaiti (d.231/846): 'he is my tongue' (lisānī).[25] Anmati (d.288/901), disciple of two disciples of Shafi'i, Muzani and Rabi', is said to have been responsible for the success of Shafi'i's works in Baghdad.[26] Ibn Suraij (d.306/918) is said to have advocated the doctrine of Shafi'i and refuted its opponents (qāma bi-nuṣrati madhhabi 'sh- Shāfi'ī . . . wa-radda 'alā 'l-mukhālifīn).[27] The disciples of Marwazi (d.340/951) spread abroad the doctrines of Shafi'i (intashara 'l-fiqhu 'an aṣḥābihī fī 'l-bilād).[28]

Thus to say that a school survived because it was favoured by the prince is to put the cart before the horse. Princes were practical politicians. They gave their support where it did the most good for themselves; they gave support where they found strength already in existence.

Furthermore, to say that the geographical location was important is to fall prey, once again, to our own terminology of convenience. Our concept of a school is something that is located somewhere as an entity. But we already know that although the schools of law were referred to, early on, by geographical names, they were later designated by the names of persons. There was nothing to stop the adherents of a personal school moving from one centre to another. The Muslim seeker of knowledge was a great traveller, and in Islam, travel was untrammelled. In this he was better off than his counterpart in the Latin West; for unlike the latter, he could go from city to city and country to country without losing his 'citizenship'; he 'belonged' by virtue of his religion. There were no city-states in Islam.

The argument of location was taken from some remarks made by al-Maqdisi, the tenth-century geographer. Maqdisi was well aware of the freedom of travel in Islam. His remarks must therefore be understood in another light, namely, that had the ideas of al-Auza'i (whose case he was using as an illustration) been defended where they could have received the broadest propagation, his doctrines would

have survived. If al-Auza'i's doctrines did not survive, it was because he did not have a sufficient number of followers; or, as Shafi'i had said of Abu 'l-Harith al-Laith (d.175/792),[29] his followers made no effort to support him.

Regarding the crystallization of the Sunni schools of law, the passage in the history of al-Maqrizi, echoed by Joseph Schacht, puts the beginning of the process of diminution and crystallization in the year 665 H. The passage, translated here, reads as follows:

> When al-Malik az-Zahir Baibars al Bunduqdari acceded to the sultanate,[30] he appointed in Fustat and Cairo four qadis, a Shafi'i, a Maliki, a Hanafi, and a Hanbali and the situation continued in this way as of the year 665 H. [A.D. 1267] until there remained in all the cities of Islam no other school of law of the schools known in Islam except these four, and the creed of Ash'ari [d.c.325/937]. Madrasas, khanqahs, zawiyas and ribats were in all of the Muslim lands. Those who followed any other schools were shunned, disavowed. No qadi was appointed, no testimony was accepted of any shahid-notary, no one was appointed as a preacher of the Friday Sermon [khatib], or as the leader of the ritual prayers [imam], or as professor of law [mudarris], unless he was a follower of one of these schools of law. The jurisconsults of these cities issued legal opinions throughout this period, making it obligatory to follow these schools and prohibited adherence to any other. Such is the practice up to this day.[31]

Maqrizi, who straddled the fourteenth–fifteenth centuries (766-845/1364-1442), seems to have been unaware of the fact that these four schools of law had already emerged as the sole survivors at an earlier date elsewhere. Already in Baghdad, the caliph an-Nasir[32] had limited the appointment of qadis to the four schools; and after him, it was the same four schools of law that were represented in the Madrasa Mustansiriya in Baghdad, founded by the caliph Mustansir in 631/1237.[33] Both caliph and sultan, in doing so, were only confirming a fait accompli; for neither of them could control a matter that belonged to the consensus of the community. The limitation had already been a matter of consensus a century before the accession of Nasir to the caliphate. For, as already mentioned, about the year 475/1082, the last representative of the Zahiri school of law died, marking the extinction of that school in the cultural centre of Islam.[34]

6. Key to Understanding the Phenomenon of the Schools

To my mind, the key to understanding the phenomenon of the schools of law in Islam is to be found in the interplay of law and traditionalism. It is to be found in the struggle between legal traditionalism and theological rationalism, the turning-point of which struggle was the

Great Inquisition, the Mihna. Moreover, it is to be found in Baghdad, cultural centre of the Muslim world.

The development of the schools can best be understood when the facts regarding the development of hadith and legal studies are taken into consideration. In the history of this development, there are two moments of great significance; they have to do with the last two schools of the four surviving schools of law: the school of Shafiʿi and the school of Ahmad b. Hanbal; Shafiʿi, for his synthesis of reason and authority in the law, and Ibn Hanbal, for heroically surviving the Inquisition. Shafiʿi's achievement, with which Schacht has dealt so well, need not be dwelled upon here. Through Shafiʿi, the traditionalist thesis was accepted over that of the ancient schools; that is, he replaced the 'living tradition' of a given city with the tradition of the Prophet.

But the decisive struggle was yet to come between ahl al-kalam, the rationalist Muʿtazilis, and ahl al-hadith, the traditionalists. Note that these are the two antagonistic groups of Shafiʿi's time. The rationalists had not lost their importance after Shafiʿi; on the contrary, their forces were increasing in political strength. In fact, when Shafiʿi died in 204/820, Muʿtazilism was just reaching the peak of its political power, in the caliphate of al-Maʿmun. It was the period of the important movement of translation of the Greek works on philosophy and science. It was also the period of the great Inquisition, in which the Muʿtazilis played the leading role. It established a reign of terror during the reigns of the four caliphs: al-Ma'mun, al-Mu'tasim, al-Wathiq and al-Mutawakkil. It was not until the second year of al-Mutawakkil's caliphate that it was brought to a halt. From that time on, Muʿtazilism was finished as a political power, and traditionalism assumed its ascendancy over the rationalistic forces. The hero of the traditionalist movement was Ahmad b. Hanbal who weathered the persecution by sheer patience and pertinacity. Against the passive resistance of this pious man, the Muʿtazili movement exhausted its political strength; it would never recover it.

The struggle between the two antagonistic forces becomes apparent when the schools of law change from the geographical designation to the personal one. For the change into personally designated schools of law is in itself indicative of a rallying call of the traditionalists to emulate the Prophet and his disciples. Just as the Prophet was the leader with followers, each school consisted of a leader, imam, with followers, sahib, pl. ashab. The criterion of leadership was universal acceptance of the jurist with the greatest knowledge of Islamic law.

The proliferation of personal schools, each with its leader, was accomplished in this manner. Of those that survived, the first three came into existence before the Inquisition. If the other numerous schools disappeared, it was not because of lack of legal knowledge on

the part of their leaders. To my mind, it was rather because of a natural movement on the part of the traditionalists to close their ranks in order to present a solid front against the perennial enemy, rationalism.

Contemporary with the development of the school of Ibn Hanbal, other personal schools came into existence, lasted for varying periods of time, then disappeared. Two prominent schools of this period, next to the Hanbali School, were the Zahiri and Jariri schools of law. Before the fifth/eleventh century was over, both had disappeared from Baghdad. But the Hanbali school remained, surviving the attack of the leader of the Jariri school, the great historian Ibn Jarir at-Tabari, who unsuccessfully impugned Ahmad b. Hanbal's qualifications as a jurisconsult.

But legal knowledge was not at issue, however justified or unjustified the criticism of Ibn Jarir might have been. The Hanbali school came into existence *not* as the result of a legal stance taken by its leader, but rather as the result of a traditionalist theological stance taken by him against Mu'tazili rationalism on the question of the created character of the Koran. Against the Mu'tazilis, Ibn Hanbal maintained that the Koran was the uncreated word of God; and this doctrine remained the strict traditionalist thesis of Islam. The creed, promulgated under the name of the caliphs al-Qadir (caliphate: 381-422/991-1031) and al-Qa'im (caliphate: 422-67/1031-75) in the first decades of the fifth/eleventh century, includes the doctrine of the uncreated word of God. True to its origins, the school of Ibn Hanbal is a theological-juridical school, and the only one in Islam to survive in this dual character.

One conclusion is very clear in Islamic religious history. Islam is, first and foremost, a nomocracy. The highest expression of its genius is to be found in its law; and its law is the source of legitimacy for other expressions of its genius. The traditionalists themselves had to find expression in the schools of law; and the Hanbali school is the ultimate expression of their triumph. In Islam, law, perennially a conservative force, is both the legitimizing agency and the agency of moderation, for it must rest on both authority and reason. Legitimacy was sought by various movements through association with one of the schools of law; as, for instance, the Mu'tazilis who infiltrated the Hanafi school, and the Ash'aris, the Shafi'i.[35]

As the agency of moderation, Islamic law held the line of the traditionalist development of its schools with that of the Hanbalis, eventually rejecting the Zahiri school which had gone to extremes in traditionalism by refusing to accept the principle of analogy.[36] By the end of the third quarter of the fifth/eleventh century, this school had become extinct in Baghdad,[37] which means that it had lost its effectiveness in that city long before that date. The significance of the

emergence of the Zàhiri school lies in the fact that the movement of traditionalism had been growing ever more traditionalist. It is indicative of the traditionalist momentum gone berserk. Its demise is an indication of the effectiveness of the law as an agency of moderation. As for the Jariri school, its demise may well have been due to its founder's attack against Ahmad b. Hanbal, designating him as a muhaddith, hadith-expert, not a faqih, jurisconsult. This may well have roused the suspicions of the traditionalist jurisconsults that the Jariri school was likely to develop in the direction of anti-hadith rationalism.

Moderate traditionalism triumphed, finding its final expression, both in law and theology, in the founding of the Hanbali school. When attrition had taken its toll of the schools that had come into existence, the Hanbali school emerged as the seal of the schools of law.

Thus the madhabs receiving the approval of the community's consensus were all considered equally Sunni, equally orthodox. The teaching authority rested in the hands of the doctors of the law, acting individually. The madhab, on the other hand, served as the umbrella of orthodoxy, the legitimizing agency whose shelter was sought by all who coveted the stamp of legitimacy.

The triumph of traditionalism, following the failure of the rationalist-inspired Inquisition, signalled the direction soon to be taken by Islam's institutions of learning. These institutions came to embody the ideals of traditionalist Islam, foremost among which was the primacy of the law.

II. TYPOLOGY OF INSTITUTIONS OF LEARNING

1. General Remarks

In classical Islam the madrasa was the institution of learning par excellence, in that it was devoted primarily to the study of Islamic law, queen of the Islamic sciences. The masjid, from which it developed, continued to be used for the teaching of the various Islamic sciences, including that of law. The masjid could be devoted to any one of these sciences, according to the wishes of the founder. The madrasa, on the other hand, was devoted primarily to law, the other sciences being studied as ancillaries.[38]

Because of the centrality of the madrasa, the other institutions in Islam may be divided into two periods: pre- and post-madrasa. As Islam separated the Islamic sciences from those it referred to as the 'foreign sciences', institutions in the pre-madrasa period may further be divided into those exclusive, or inclusive, of the foreign sciences. The pre-madrasa institutions exclusive of the foreign sciences were the jami'ṣ with their halqas, and the masjids; those inclusive of these sciences were the various institutions whose designations included the

terms dar, bait, khizana, essentially libraries, as well as the hospitals, maristans, from the Persian bimaristan. The madrasa itself, exclusive of the foreign sciences, developed without, as well as with, the adjunction of a mosque, whether of the masjid, or jami' variety. The latter type flourished especially in Egypt and the rest of North Africa.

With the advent of the madrasa, the institutions inclusive of the foreign sciences began to fade away, becoming extinct by the sixth / twelfth century. This was the century of the madrasa's cognate institution, the dar al-hadith, in Damascus, raising the rank of the professor of hadith to that of the professor of law, and at the same time adopting the term dar, as though to accentuate the triumph of traditionalism over the mortal remains of the institutions inclusive of the foreign sciences: the dar al-'ilm and cognate institutions. The following century saw the development of the dar al-qur'an, devoted to Koranic studies, though one of these[39] is said to have been founded in Damascus around the year 400 H.

Other cognates of the madrasa were the monasteries designated for the most part as ribat, the other terms being khanqah, zawiya, and turba. Ribats appear early as institutions of learning, alongside the masjid, teaching Sufism through the study of hadith; and by the sixth / twelfth century, combine the study of Sufism with law.

From another standpoint these institutions of learning may be further divided into exclusive and unrestricted institutions: exclusive, in that they were devoted to a particular madhab, and admission was restricted to members of that madhab; unrestricted, in the sense that members of all schools could be admitted. Exclusivity applied only to institutions teaching law: the masjid, when it was devoted primarily to law, and the madrasa. All other institutions were, in this sense, unrestricted, admitting adherents of any and all madhabs. Such were the jami's, the masjids devoted primarily to subjects other than law, the institutions inclusive of the foreign sciences, as well as the maristans, and the monasteries not specializing in law.

2. Pre-Madrasa Institutions

a. Institutions Exclusive of the Foreign Sciences

1) The Term Majlis and the Primacy of the Mosque

The mosque, masjid, was the first institution of learning in Islam. The term majlis gives philological evidence to this effect. It was used in the first century of Islam to designate a hall in which the teaching of hadith took place: kharaja . . . ilā majlisihī 'lladhī kāna yumlī fīhī 'l-ḥadīth (he left for his hall in which he dictated hadith).[40] It was also used to designate the lesson or lecture itself: lam yuḥaddith illā majlisan au majlisain (he delivered only one or two lessons of hadith);[41] the professor's chair or post: huwa 'l-muqaddamu min aṣḥābih, wa 'lladhī jalasa ba'dahū fī majlisih (he was the most advanced of his fellows [=disciples], the one who succeeded to his

chair).[42] It also designated the people of the majlis.[43]

In morphology, the term majlis is a noun of place (ism makan, nomen loci) of the verb *jalasa* which, when used loosely, means *to sit*, and as such, is a synonym of *qa'ada*. But, properly speaking, *qa'ada* means *to sit down*, whereas *jalasa* means *to sit up, to sit up straight*. The action of *jalasa* takes place from a sleeping, reclining, or prostrate position. The texts are not lacking wherein a professor is said to have first performed his prayers in the mosque and then to have sat up, *jalasa*, in order to teach; and where he sat up to teach was his majlis for teaching. In his work on legal education, entitled *The Master-Jurisconsult and the Student of Law*, al-Khatib al-Baghdadi (d.463/1071), speaking of the early Salaf, Fathers of Islam, says: thumma ataui 'l-jum'ata wa-ṣallau rak'atain, thumma jalasū yabuththūna 'l-'ilma wa 's-sunna (they used to attend the Friday Service and pray two rak'as, then they would *sit up* to teach religious science and the Sunna).[44]

The term majlis, therefore, originally meant the position assumed by the professor for teaching after first having performed the ritual prayer in the mosque. It was then used, by extension, to apply to all sessions wherein the activity of teaching or other learned discussions took place, and later to a number of activities. The term majlis an-nazar and majlis al-'ilm are given by Dozy[45] as meaning the 'meeting place of scholars who discuss'. More particularly, the majlis an-nazar or majlis al-munazara meant the meeting place for disputation, whereas majlis al-'ilm was a meeting usually referring to discussions regarding hadith, and more generally, discussions on subjects whether of religious or scientific knowledge, with the term majlis al-hadith designating unequivocally the meeting place for the teaching of hadith, a classroom for the purpose. Majlis al-'ilm was also used in reference to medicine: kāna lahū majlisu 'ilmin li 'l-mushtaghilīna 'alaihī bi 'ṭ-ṭibb (he had a seminar for those studying medicine under his direction), said of Muwaffaq ad-Din 'Abd al-'Aziz as-Sulami (d.604/1207), a physician-jurisconsult of Damascus.[46]

Majlis al-hukm meant the place in which a qadi held his hearings, a court-room; majlis al-wa'ẓ, the meeting-place for the popular or academic sermon; and majlis at-tadris, the place in which the teaching of law took place, a classroom used for this purpose; as, for instance, in the following text, regarding Abu Sa'id al-Hasan b. 'Abd Allah as-Sirafi (d.368/978), of whom the author says: kāna lā yakhruju ilā majlisi 'l-ḥukmi wa-lā ilā majlisi 't-tadrīsi fī kulli yaumin illā ba'da an yansakha 'ashra waraqāt (it was his custom not to go out to his court-room nor to his law-classroom until he had copied ten folios).[47]

Other types of meeting-places were: majlis ash-shu'ara', a meeting-place of poets; majlis al-adab, for bellettrists; majlis al-fatwa, for a jurisconsult, in which he issued solicited legal opinions; majlis al-

fatwa wa 'n-nazar, for legal opinions and disputation; majlis at-tadris wa 'l-fatwa, for teaching law and issuing legal opinions. The term majlis designated also what a professor dictated during a lesson. This meaning was made clear when the term was coupled with the word for dictation, majlis al-imla'.[48]

The mosque preserved its primacy as the ideal institution of learning, and law, its primacy as the ideal religious science. Both ideals are voiced in Baghdadi's work, mentioned above, in the titles of some of his chapters: *Faḍl majālis al-fiqh ʿalā majālis adh-dhikr* (The Excellence of Sessions on Religious Law over Those of the Sufi dhikr);[49] *Faḍl at-tafaqquh ʿalā kathīrin mina 'l-ʿibādāt* (The Excellence of Learning the Religious Law over Many Forms of Piety);[50] *Tafḍīl al-fuqahā' ʿalā 'l-ʿubbād* (The Preference of Jurisconsults over Devotees).[51] After establishing the excellence of the study of jurisprudence on the basis of scriptural texts, Baghdadi devotes a chapter to *Faḍl tādrīs al-fiqh fī 'l-masājid* (The Excellence of Teaching Law in the mosques).[52]

2) The Jamiʿ and its Halqas in Baghdad

a) *The Jamiʿ*. The terminology used for the designation of institutions of learning is not always easy to pin down. This is especially true of the early centuries of Islam, when the terminology was fluid, during a stage of development when institutions were still in flux. There was, however, a definite distinction made between the two types of mosques in Islam: the Congregational Mosque, jamiʿ, and the ordinary, everyday mosque, masjid. The term jamiʿ is elliptical, being originally the adjective in the phrase *al-masjid al-jāmiʿ* (the mosque that brings together, unites, the congregation of the faithful). The elliptical term, jamiʿ, came to be used for the Friday Congregational Mosque in contradistinction to the term masjid, for the non-congregational mosque; the former being the mosque which had the chair of the preacher, designated as the khatib, who delivered the Friday sermon called the khutba. We see the distinction referred to clearly by the fifth / eleventh century constitutional theorist Mawardi (d.450 / 1058). Speaking of a professor teaching in a jamiʿ or masjid in a location known by his name, Mawardi says the professor has a prescriptive right to teach there, according to Malik: wa-idha 'rtasama bi-mauḍiʿin min jāmiʿ au masjid, fa-qad jaʿalahū Mālik aḥaqqa bi 'l-mauḍiʿ, idhā ʿurifa bih (when [the professor] holds a post in a particular location in a jamiʿ or masjid, Malik considers him to be entitled to it, if it is known by his name), thus making a distinction between jamiʿ and masjid.[53] Note that the distinction made here is not simply in the mosque as a place of prayer, but as an institution of learning, since Mawardi is referring to a professor.

The jamiʿ as an institution of learning had halqas, study-circles, in which the various Islamic sciences were taught. The halqa was common to all jamiʿs. The jamiʿs of Damascus and Cairo differed,

however, from those in Baghdad, in that they had zawiyas, referred to also as madrasas, where law was taught according to one of the four Sunni madhabs. The Umaiyad Mosque of Damascus, called also al-Jami' al-Ma'mur, and the Cairene al-Jami' al-'Atiq, had each eight zawiyas for this purpose.[54] It is noteworthy that later under the Ottomans, the Sulaimaniya Mosque in Istanbul had also eight madrasas.[55]

In contrast to both Baghdad and Damascus, there were a great number of Friday Mosques in Cairo, a matter which went counter to the consensus of the doctors of Islam, among them Shafi'i.[56] In Baghdad, on the other hand, there were only six jami's, or Friday Mosques, in the middle of the fifth /eleventh century, but hundreds of masjids, or simple mosques.

In Baghdad, the halqa of a jami' served other purposes besides that of teaching one of the various Islamic sciences or their ancillaries, such as the issuing of legal opinions (li'l-fatwā, li'l-iftā'), for regular sessions of disputation (li' n-naẓar, li 'l-munāẓara), for a combination of both (li'l-fatwā wa'n-naẓar, li'l-fatwā wa 'l-munāẓara), for delivering academic sermons (li 'l-wa'ẓ), for both disputation and academic sermons (li 'l-munāẓara wa 'l-wa'ẓ).[57]

The caliph's authorization was needed in order to designate a jami' as such. The following passage regarding the jami' in the Harbiya quarter of Baghdad is taken from the *Muntaẓam* of Ibn al-Jauzi (d.597 / 1200) who has it on the authority of al-Qazzaz (d.535 / 1141), from al-Khatib al-Baghdadi, from Hilal as-Sabi (d.448 / 1056), all three, historians of Baghdad:

> Al-Hashimi had built a masjid in the Harbiya quarter in the caliphate of al-Muti' bi 'llah [caliphate: 334-63 / 946-74] with the intention of making it into a jami' in which the khutba is delivered. The caliph al-Muti' did not give his authorization for it, and the masjid remained as such until the accession of the caliph al-Qadir bi 'llah, who asked the jurisconsults for their legal opinions regarding the matter. Their consensus passed favourably on the legitimacy of the jami' there. Whereupon the caliph gave orders for it to be renovated, furnished for the purpose, and outfitted with a minbar [for the Friday sermon] and he appointed an imam to lead the Friday prayers in it. This took place in the month of Rabi' II in the year 383 [A.D. May–June, 993].[58]

Ibn al-Jauzi then quotes al-Khatib al-Baghdadi as saying:

> I lived to attend the Friday prayers being performed in Baghdad in the Mosque of al-Madina [Mosque of the Round City of the Caliph al-Mansur], in that of the quarter of ar-Rusafa, [also called the Mosque of al-Mahdi], in the Mosque of the Caliphal Palace [Jami' al-Qasr], in the Mosque of the Baratha quarter,

in the Mosque of the Fief of Umm Ja'far, and in the Mosque of the Harbiya quarter. These mosques remained Congregational Mosques until the year 451 / 1059, in which year the Friday prayers were discontinued in the Mosque of the Baratha quarter where they were no longer performed.[59]

The passages just quoted are significant; they show that Baghdad, in the middle of the fifth / eleventh century, had six jami's; that jami's were designated as such by order of the caliph, it being his prerogative to authorize or prohibit their constitution as such; that the caliph appointed the imam; that jami's were few in number, compared with the great number of masjids in a city. Baghdad was cited as having as many as three thousand mosques, which meant three thousand of the non-congregational type. The jami' of the Baratha quarter was changed in status from a jami' to a masjid in 451 / 1059. This date is significant in that it was in this year that Basasiri (d.451 / 1059), the Sunni Turkish general, who was killed by the Saljuq Tughril Beg, had changed his political allegiance to the Fatimid caliph of Cairo, in defiance of the caliph al-Qa'im. After Basasiri's death, the caliph stripped the jami' of its status as punishment for the Shi'is of the Baratha quarter who had supported Basasiri.

There is, therefore, a fundamental distinction to be made between the two types of mosque, a distinction related to the type of religious service involved. The khatib who delivered the khutba, Friday sermon, in which the name of the sovereign was mentioned, was appointed by the caliph. The khatib mentioned the name of the caliph alone, when the caliph had the armies under his command; the names of both caliph and sultan were mentioned when the caliph had lost that power and the sultan had succeeded in making a show of force greater than all other contenders for power. The sultan then asked the caliph to have his name included in the Friday sermon. The latter had to comply by reason of the sultan's effective show of force.

b) *Appointments to Halqa Posts.* The statement has been made and reiterated that the official called Naqib al-Hashimiyin in Baghdad appointed professors to teaching posts in the great Mosques, the jami's. He has been represented as the head of a guild of masters. From here it was but a simple step to arrive at the conclusion that there was a university in Baghdad in the eleventh century. A guild of masters in Baghdad would thus be the counterpart of the latter universitas magistrorum in thirteenth-century Paris. This problem, resulting from a misreading of history, clearly shows that ignorance of the sociopolitical situation existing in Baghdad at the time can be a serious hindrance to understanding the development of its institutions of learning.

(1) The Case of al-Khatib al-Baghdadi. The notion of a university in Baghdad is based on an anecdote related by Yaqut (d.626 /

1229).[60] Baghdadi asked the caliph for permission to dictate hadiths in the Mosque of al-Mansur. His request to the caliph al-Qa'im was put in the following terms: ḥājatī an yu'dhan lī an umliya fī Jāmi' al-Manṣūr (The object of my request is that I *be permitted* to dictate hadiths in the Mosque of Mansur).[61] The passage then continues as follows: fa-taqaddama 'l-khalīfatu ilā Naqīb an-Nuqabā' bi-an yu'dhan lahū fī dhālik; fa-ḥaḍara 'n-Naqīb (So the caliph gave orders to the Naqīb an-Nuqabā' [=Naqib al-Hashimiyin] that Baghdadi *be permitted* to do so, and the Naqib attended the session).[62]

It will be noticed that the same verb used in reference to the caliph, was also used in reference to the marshall of the Hashimi sharifs, descendants of the Prophet: *an yu'dhan*, 'that he be permitted'. In the case of the caliph, it meant permission to dictate hadith in the Mosque of al-Mansur, the caliph having the authority to dispense such appointments, whether of a temporary or permanent nature. In the case of the naqib, it meant facilitating the matter for Baghdadi. The Mosque of Mansur was a stronghold of the Hanbali traditionalists, hostile to Baghdadi. The function of the naqib, as marshall of the Hashimis, was to make Baghdadi's sessions of hadith-dictation safe against demonstrations leading to riots. Baghdadi, who had been a Hanbali, had changed his membership to the Shafi'i madhab,harmless in itself, but had also changed his allegiance to Ash'arism, to which the Hanbalis were opposed. He had also referred to Ahmad b. Hanbal as 'Grand Master of the Traditionalists', and to Shafi'i as 'Crown of the Jurisconsults', thus slighting Ibn Hanbal as a jurisconsult, as Tabari had done before him.[63] The quarter of Bab al-Basra was the stronghold of the Hanbalis, and the Mosque of Mansur was in their quarter. Anyone of a controversial character who wanted to preach there or dictate hadiths had to have the naqib's *guarantee of safe conduct*, not his *permission* to perform a teaching function in the Mosque; that was the prerogative of the caliph alone.

There are two subsequent cases which bring out the connection between the Mosque of Mansur and the Hanbalis, on the one hand, and the function of the naqib with regard to this Mosque, on the other.

(2) The Case of al-Bakri. In the year 475/1082, al-Bakri, an Ash'ari preacher, succeeded in preaching in the Mosque of Mansur, but only thanks to the Turkish and Persian soldiers under the command of the shihna, agent of the sultan, who provided the necessary protection against the hostile inhabitants of Bab al-Basra. Al-Bakri had permission from Nizam al-Mulk (d.485/1092) to preach in his Madrasa Nizamiya in Baghdad, where he preached Ash'arism and cursed the Hanbalis. He then preached in other places in Baghdad and insisted on preaching in the Mosque of Mansur. The caliph told the naqib to facilitate his preaching there. The naqib's answer was: lā ṭāqata lī bi-ahli Bāb al-Baṣra (I do not have the power to cope with

the inhabitants of Bab al-Basra). The caliph urged him: lā budda min mudārāti hādhā 'l-amr (it is absolutely necessary that the matter be managed). Whereupon the naqib answered: ib'athū ilaiya aṣḥāba 'sh-shiḥna (send me the men of the shihna). The shihna then appeared with his armed men.[64]

(3) The Case of Al-'Abbadi. In the year 546/1152, on asking the caliph's permission to hold a session in the Mosque of Mansur, 'Abbadi (d.547/1152) was told: lā taf'al; fa-inna ahla 'l-Jānib al-gharbī lā yumakkinūna illā 'l-Ḥanābila (do not do so; the inhabitants of the West Side make this possible only for the Hanbalis). But 'Abbadi insisted; and the marshall of the Hashimis took on the responsibility of protecting him (fa-ḍamana lahū Naqīb an-Nuqabā' al-ḥimāya). The session was held, but not without provoking a riot in which al-'Abbadi was shouted down, bricks were thrown, and the crowd was dispersed. 'Abbadi was surrounded by bodyguards, with drawn swords, until he had finished, after which he was safely led away, 'out of his mind with fear'.[65]

The naqib was merely the registrar of the descendants of the Prophet, the sharifs, under his jurisdiction. He acted on orders of the caliph in providing protection to the professor whose authorization for dictating traditions in the Mosque of Mansur came from the only person who could give it, namely the caliph. It is therefore time to lay to rest the fiction of an alleged head of a guild of professors in Baghdad. That the marshall Tirad az-Zainabi was in charge of the Abbasid Hashimi nobility, and the Talibi marshall, in charge of the 'Alid nobility, can be clearly seen in a number of texts.[66]

In Tirad az-Zainabi's biographical notice, he is said to have taught hadith in the Mosque of Mansur.[67] If he had actually controlled teaching in this Mosque, there would have been no necessity for the biographer to say that he dictated hadith there, as is said of many other muhaddiths. The significance of the citation is that, in addition to being marshall of the Hashimis, he was a muhaddith, a scholar of hadith, of such a reputation as to earn for him the privilege of dictating it there. The Mosque of Mansur was the stronghold of the traditionalists who honoured hadith very highly, so much so that it became famous for the subject. Its status is made clear from the life-time wish of al-Khatib al-Baghdadi to dictate hadith there.

(4) The Case of al-Qutrub. The case of al-Qutrub (d.206/822), much earlier than that of al-Khatib al-Baghdadi, is a further clarification of that of Baghdadi with the marshall of the Hashimis. Just as the Ash'arism of Baghdadi was offensive to the inhabitants of the quarter of Bab al-Basra, the Mu'tazilism of Qutrub was opposed by the common people of the quarter where Qutrub wished to read his commentary on the Koran in the Mosque. Fearing the reaction of the crowd, because he had incorporated Mu'tazili doctrines into his com-

mentary, he sought the protection of a section of the caliph's forces in order to do his reading. The caliph at the time was al-Ma'mun who later was to champion Mu'tazilism during the Mihna.[68]

Taj ad-Din as-Subki (d.771 / 1370) cited the case of Abu Mansur al-Jili (d.452 / 1060) to whom the caliph had given a halqa in one of the jami's of Baghdad. This appointment was a matter of controversy and it was to the caliph that the objection was raised.[69]

In contrast to the jami', where the caliph made appointments to its various posts, the masjid, according to al-Mardawi (d.885 / 1480), could have its imam chosen by its founder whoever he might be.[70] Al-Mardawi wrote of this in his *Inṣāf* as follows: a person may be appointed (by the founder, waqif) as imam of a masjid; he may stipulate its imams to belong to a certain madhab exclusive of other madhabs; the masjid itself may be restricted by the founder to adherents of a certain madhab even for prayers, because different madhabs have different rules for prayers.[71]

On the other hand, Ibn Hubaira was against such restriction.[72] The jami', in contrast, differed from the masjid in that it was unrestricted as to madhab.

c) *Variety of Subjects in the Halqas.* The institution of learning in the jami' was called a halqa, study-circle. Dozy gives the following meanings: '*a meeting of students around a professor*; hence, *course, succession of lessons*; also, *a hall where someone in place held meetings, gave lectures, where a professor gave lessons*'.[73] There were many halqas in a jami', each belonging to a professor appointed by the caliph. Halqas were sometimes known by the discipline taught in them; as, for instance, the study-circle of the grammarians, halqat an-nahwiyin; the study-circle of the hadith scholars, halqat ahl al-hadith. They were also known by their occupants, as in the case of the Study-Circle of the Barmakids, Halqat al-Baramika. This halqa was probably named after the Barmaki family, the father Abu Hafs 'Umar b. Ahmad al-Barmaki (d.387 / 997),[74] and his three sons.[75]

Professors could hold positions in several halqas in the jami's of the city. In the case of the hadith-expert Abu Bakr an-Najjad (d.348 / 960), it is said that he had two halqas in Jami' al-Mansur. The text runs as follows: kānat lahū fī Jāmi' al-Manṣūr yauma 'l-jumu'ati ḥalqatāni qabla 'ṣ-ṣalāti wa-ba'dahā; iḥdāhumā li 'l-fatwā fī 'l-fiqhi 'alā madhhabi Aḥmad, wa 'l-ukhrā li-imlā'i 'l-ḥadīth (he had in Jami' al-Mansur on Friday two halqas, before and after the Friday Service, one for issuing legal opinions according to the school of Ahmad b. Hanbal and the other for dictating hadith).[76] Abu l'Hasan b. az-Zaghuni (d.527 / 1132) had a halqa in which he taught two subjects, one before and one after the Friday Service: kānat lahū ḥalqatun fī Jāmi' al-Manṣūr yunāẓiru fīhā qabla 'ṣ-ṣalāt, thumma ya'iẓu ba'dahā (he had a halqa in Jami' al-Mansur in which he con-

ducted disputations before the Friday Service, and then preached an academic sermon after the Service).[77] Abu 'l-Wafa' b. al-Qauwas (d.476/1083) had a halqa in Jami' al-Mansur for both disputations and legal opinions.[78] Ibn al-Banna' (d.471/1078) had a halqa in Jami' al-Qasr in which he issued legal opinions and taught hadith; he also had a halqa in Jami' al-Mansur.[79]

Other halqas were for the teaching of fiqh,[80] for academic sermons, wa'z,[81] or for fatwas[82] alone, or these three fields could all be the subjects of one and the same halqa.[83] In the Mosque of Mansur, there was a halqa for grammar, Halqat an-nahwiyin,[84] grammar being a term that covered literature as well. Adab-literature was also taught in halqas; al-Jawaliqi had a halqa for this purpose in the Mosque of the Caliphal Palace.[85]

In making his appointments to halqas, the caliph could be prevailed upon by men of influence or great scholarly reputation in favour of a particular candidate. For instance, Abu Mansur b. Yusuf (d.460/1068), the wealthy Hanbali merchant, was instrumental in getting the young Ibn 'Aqil (d.513/1119) appointed to the prestigious Halqat al-Baramika in Jami' al-Mansur over the head of his senior, the Sharif Abu Ja'far (d.470/1077), and this led to trouble for Ibn 'Aqil and to his exile.[86] An earlier instance is the case of the great imam Shafi'i who turned his chair over to a favourite disciple saying to him: Qum yā Abā Ya'qūb fa-tasallami 'l-ḥalqa (Abu Ya'qub, step up and take over the halqa).[87] Abu Ya'qub was the patronimic of al-Buwaiti (d.231/846). The caliph could not have been opposed to Shafi'i's choice.

A halqa was a professorial chair. This is what was said of the post occupied by al-Ghaznawi in Jami' al-Qasr. The text reads as follows: Wa-fī Rabī' al-ākhir muni'a 'l-Ghaznawī mina 'l-julūsi fī Jami' al-Qaṣr wa-rufi'a kursīyuh (In the month of Rabī' II [542 H.] al-Ghaznawī was prohibited from taking his seat in Jami' al-Qasr and his chair *was removed*). In Jumāda I of the same year, he *was given permission* to assume his chair once again in the Jami': udhina li 'l-Ghaznawī fī 'l-'audi ilā 'l-julūs.[88] In both passages, the passive verb, according to custom, referred to the caliph.

The size of the halqa varied according to the subject taught in it. A halqa where hadith was dictated was, generally speaking, larger than one, say, on law or grammar. The size was also affected by the reputation and popularity of a given professor. Because of the larger attendance for hadith, assistants were hired to help in relaying the voice of the professor to those rows of attendants who were too far removed from the professor to be able to hear him clearly. The assistants, called mustamlis, repeated the text dictated by the professor so that all could take it down in dictation.[89]

The jami', besides being a place of worship for the Muslim con-

gregation on the sabbath, Friday, with its Friday sermon, also supplied the place where the various Islamic disciplines and their ancillaries, including Arabic language and literature, were taught. Each professor had his subject, or subjects, to teach in a halqa, and each halqa had its attendants among interested students. The professors were paid by the caliph.[90] There is no available evidence of stipends for students. Students were free to attend any halqa they wished to attend, presumably with the permission of the professor, for the jami' was an unrestricted institution. The only restriction would be in a halqa where law was being taught; here only those students could attend who belonged to the madhab whose law was being taught. But any Muslim was free to change his allegiance from one madhab to another, at any time, and attend the halqa of his choice. The jami' was neither a college nor a university, in the Western Latin sense of the two terms.

d) *The Maktab and the Kuttab*. The maktab was the institution of learning where elementary education took place and the studies of which led to the level of higher education, such as specialization in law. 'Abd al-Ghafir al-Farisi (d.529/1134) quotes a jurisconsult speaking of a former classmate: kāna sharīkī fī 'l-maktab wa'd-dars (he was my classmate in the maktab and in the study of law).[91] The studies of the maktab led to study in a masjid-college or madrasa, and to the halqas of the jami'.

Both the maktab and kuttab were schools for elementary education. However, there is reason to suspect that there was a difference between the two, at least in Nishapur. 'Abd al-Ghafir al-Farisi attended the maktab at the age of five where he studied the Koran, and learned the profession of faith in Persian. He then attended the kuttab after reaching the age of ten, and there he studied adab-literature, copying and memorizing books on the subject.[92] An early instance shows a kuttab in the year 302 H. in Baghdad where the mu'addib, teacher, was the Basrian philologist Abu Ishaq Ibrahim b. as-Sari az-Zajjaj (d.311/923), among whose pupils were the sons of the caliph al-Muqtadir (caliphate: 295-320/908-32).[93] Pupils are said to have entered the maktab at the age of seven,[94] and ten.[95] The maktab is mentioned as a school where khatt, caligraphy or writing, is taught,[96] as well as the Koran,[97] the creed (i'tiqad) and poetry.[98]

3) The Jami' in Damascus

The jami' in Damascus, the Umaiyad Mosque, differed from that of Baghdad with regard to the institutions of learning within it. Whereas in Baghdad the halqa was the only institution of learning within the jami', the Umaiyad Mosque in Damascus boasted several technical terms for its institutions. Nu'aimi gives a breakdown of these institutions for the period in which he was writing his book (tenth/sixteenth century).[99]

a) *Halqas and Mi'ad.* There were three halqas for hadith referred to as mi'ads, and eleven halqas for ishtighal, graduate work, in the field of law. These halqas were designated by the names of their incumbent professors at the time of Nu'aimi's writing.

b) *Tasdirs.* Nu'aimi states that there were at the time in question seventy-three mutasaddirs, holders of a post of tasdir, for teaching the Koran, too many, he said, to cite them by the name of their holders.

c) *Sab's.* The term sab' refers to the Koran, in several ways: the seven verses of the opening chapter; or chapters two to eight of the Koran; or the whole Koran; and asba' al-qur'an refers to the seven sections, or volumes, of the Koran.[100] It may also refer to the variant readings of the Koran.[101] Nu'aimi cites twenty-four such sab's with, for example, 378 students in a beginners' sab' where the students learned to memorize the Koran; and 354 students in as-sab' al-kabir, Great Sab'; and 420 students in Sab' al-Kuriya. The remaining sab's are designated by the incumbent professors or by one of two madhabs: the Hanbali and the Maliki.

d) *Zawiyas.* The zawiya in the Umaiyad Mosque was referred to also as a madrasa. There were eight such zawiyas: two Shafi'i, one Hanbali, three Hanafi, one Maliki, and one designated ash-Shaikhiya, named after Ibn Shaikh al-Islam. Among these eight zawiyas, there was one designated al-Ghazzaliya, named after Ghazzali (d.505/1111) who taught Shafi'i law there after leaving the Nizamiya of Baghdad where he had been teaching that subject from 484 to 488 H. (A.D. 1091-5). The same zawiya was also designated an-Nasriya, named after the previous incumbent, Nasr al-Maqdisi (d.490/1097), a Shafi'i jurisconsult.

4) The Jami' in Cairo

a) *Zawiya.* The phenomenon of the zawiya as a college of law within the jami' is also found in the earliest jami' in Cairo, which was variously designated as al-Jami' al-'Atiq (The Old Jami'), Taj al-Jawami' (The Crown of the Jami's) or the Jami' of 'Amr b. al-'Ass, the first great Mosque to be built in Cairo after the Islamic conquest. The Egyptian historian al-Maqrizi cited eight zawiyas in this Mosque fot the teaching of law.[102] The last two are said to have been for the teaching of hadith (li-qirā'at al-mī'ād).

b) *Halqa.* Maqrizi said that there were also halqas in this Mosque, more than forty of them before the plague of 749 H., for teaching the Islamic sciences (li-iqrā' al-'ilm).[103]

c) *The Madrasa-Jami'.* J. Pedersen saw no distinction between madrasa and mosque because he was concentrating on the Mosques of Cairo, the jami's which were madrasa-jami's. Indeed, the main function of many jami's in Cairo was that of an institution of learning primarily, while serving secondarily as a Friday Mosque, whence the

great number of jami's in the city. This practice, going counter to the previous custom of Baghdad, was censured by al-Maqrizi, who pointed out that in one case the call of the muezzin of one mosque was well within earshot of another mosque.[104] The custom, based on a tradition of the Prophet, was that a city should have only one great mosque for the Friday congregational service, the presence of more than one thus being unusual and requiring justification and approval by fatwa.[105]

In Baghdad it was the caliph who, on the fatwa of the jurisconsults, founded the great Mosques, or changed the status of a masjid to that of a jami'. It was also the caliph who appointed learned men to the teaching posts in a jami'. In the Saljuqid period when the sultans made a show of force in the city, they built a jami', Jami' as-Sultan, the Sultan's Mosque, on Baghdad's East Side.[106] But this Mosque came later under the jurisdiction of the caliph, when Saljuqid power was on the wane. In Cairo, the madrasa-jami' was founded by caliphs as well as other high officials of the central power.

Some of the great madrasa-jami's of Cairo, in addition to the earliest Mosque mentioned above, include: Jami' al-Hakim,[107] al-Jami' al-Azhar,[108] Jami' al-Malik an-Nasir Hasan[109] and al-Jami' al-Mu'aiyadi.[110]

5) The Masjid

Masjids existed as colleges early in Islam. Abu Ja'far al-Ma'dani (d.132/750) taught in the 'Masjid of the Messenger of God' (Masjid Rasul Allah).[111] It is possible that the Prophet himself had taught his disciples there. Masjids were designated by the names of those who taught in them; as, for instance, the Masjid of 'Abd Allah b. al-Mubarak (d.181/797),[112] with an adjacent khan as a residence for out-of-town students.[113] Yaqut cites masjids for grammar and philology for the second half of the second/eighth century, among them that of the grammarian al-Kisa'i (d.189/805).[114] There were many other masjids known by the name of the professors for whom they were founded or by the founding professors: the Masjid of Shafi'i (d.204/820),[115] located on Saffron Road in Baghdad;[116] the Masjid of Qadi Abu Hassan az-Ziyadi (d.242/856);[117] the Masjid of Abu Bakr ash-Shafi'i (d.354/964);[118] the Masjid of Di'lij (d.351/962);[119] the Masjid of Abu Sahl as-Su'luki (d.369/980);[120] the Masjid of Ibn al-Baiyi' (d.405/1015);[121] the Masjid of ar-Raushanani (d.411/1020);[122] the Masjid of ash-Sharmaqani (d.451/1059);[123] the Masjid of Abu Bakr ash-Shami (d.488/1095), located in the quarter of the Fief of Umm Rabi', in which he taught for over fifty-five years until his death, the last ten years of which he served also as chief qadi of Baghdad. As chief qadi, he refused remuneration, insisting on performing his duties personally without a substitute, na'ib, a practice which allowed him to fulfil his responsibilities equitably, without

special favours. It is perhaps for this reason that he did not teach in a madrasa where he would be beholden to the founder.[124] Masjids continued to be used as colleges long after madrasas were founded in various parts of the eastern caliphate; for instance, the Masjid of Ibn Shafiʿ al-Jili (d.543/1148)[125] and the Masjid of Ibn al-Muna (d.583/1187)[126] in Baghdad; and many others in Nishapur.[127]

Masjids thus served as colleges for the Islamic sciences and their ancillaries, including grammar, philology and literature. They later came to be used mostly for legal studies, before the advent of the madrasa, around the time the madhabs began to diminish in number, finally crystallizing into the four that came down to modern times.

Though masjids could not be used for lodging, they were known to have been the lodging place of ascetics for long periods of time, in addition to serving as a resting place for wayfarers and the destitute. Professors leading ascetic lives were also known to have lived in the masjids in which they taught.[128]

Masjids were also institutions of learning for Shiʿi jurisconsults, as for instance that of the famous Ibn al-Muʿallim (d.398/1007), also known as ash-Shaikh al-Mufid, located on Riyah Road on Baghdad's West Side.[129]

Being highly meritorious and socially desirable, the founding of masjids was a practice followed by men of power and influence. Al-Fadl b. Yahya (d.192/808), appointed in 178/794 as governor of Khurasan by the caliph Harun ar-Rashid, founded many masjids and ribats during his incumbency.[130] As will be seen later, Badr b. Hasanawaih al-Kurdi (d.405/1014), governor of several provinces under the Buwaihids, founded masjids on a very large scale and his experience throws light on the development of the madrasa. The famous wazir of the Great Saljuqs, Nizam al-Mulk, besides founding a vast network of madrasas, continued to found masjids and ribats throughout the lands of the Eastern caliphate. This kind of philanthropy was expected. The Ghaznawi Mahmud b. Sabuktakin (reigned: 388-421/998-1030) founded mosques great and small in all the regions under his jurisdiction.[131]

The professor, who was usually also the imam of the masjid, often lived in a house nearby. This was the case with Abu Bakr al-Khawarizmi (d.403/1012) on ʿAbduh Road in Baghdad, who resided in a house opposite his masjid.[132] Sibt Ibn Mansur al-Khaiyat (d.541/1146) lived in an upper-floor room of his masjid.[133] Ibn al-Muna lived in a house adjoining his masjid in which he taught law.[134] Ali az-Zahid (d.515/1121) had a masjid located in the quarter of Dar al-Bittikh on Baghdad's West Side, with an adjacent house.[135]

There were times, however, when professors took the liberty of lodging in the mosques in which they taught. In 483/1090, professors were forced to move out from their masjids and lodge elsewhere, all

except one who was allowed to remain. Ibn 'Aqil issued a legal opinion in his favour, qualifying him as a pious, destitute jurisconsult, lacking the financial means to pay for his lodging.[136]

In Nu'aimi's *Dāris*, 588 masjids are listed for Damascus. They are described, for the most part, as endowed and staffed with an imam and a muezzin. The Masjid of Ibn ash-Shahrazuri was so designated because the latter used to teach wa'z there.[137]

In Nishapur, the Madrasa Nizamiya had within its precincts a masjid in which Koranic studies were taught.[138] On the other hand, the masjid of as-Sandali (d.494/1101) had a madrasa attached to it.[139] In the first case, it appears that the waqf was chiefly that of a madrasa; in the second, that of a masjid. However, each of the institutions may have had a separate waqf of its own. Damascus had several such masjids built within the precincts of madrasas: a masjid in a madrasa known as Dar Tarkhan;[140] a masjid in Madrasat al-Hanabila;[141] in al-Madrasa al-Aminiya;[142] in al-Madrasa an-Nuriya;[143] in Madrasat Buzan b. Yamin al-Kurdi;[144] in al-Madrasa as-Sadiriya;[145] in al-Madrasa al-Akaziya;[146] in al-Madrasa al-Mu'iniya;[147] in al-Madrasa an-Nuriya (located in the quarter of Bab al-Faraj; the previous Madrasa Nuriya being located in the quarter of al-Qabbabun, Wet Coopers);[148] and in al-Madrasa an-Nuriya, founded for the Malikis located in the quarter of Hajar adh-Dhahab.[149] There was also a masjid within the precincts of the Dar al-Hadith founded by Nur ad-Din Zanki in the quarter of Hajar adh-Dhahab.[150]

The idea of an independent masjid in which fiqh was taught was not unknown in Damascus; as for instance, Masjid Shuja', located in the quarter of al-Bab as-Saghir, the Small Gate, which, at the time of Ibn Shaddad's writing, was known as Masjid al-Bashura. This institution was endowed with waqf property, its staff consisting of an imam, a muezzin, and in the sultanates of Nur ad-Din, Salah ad-Din and al-Malik al-'Adil, a professor of law.[151]

There were also masjids within the precincts of ribats. Several of these are cited by Ibn Shaddad (d.684/1285).[152]

6) The Khan

The khan served many purposes in medieval Islam: in a town, it served as a hotel or inn;[153] on the road, as a way-side inn; so also in the desert.[154] It also served as a warehouse[155] or commercial centre with many shops.[156] Khans were also income-producing waqf property, the income of which went to pay the stipends and defray the expenses of a waqf foundation; as, for instance, the Khan of an-Narsi located in the Karkh quarter on Baghdad's West Side, the income of which was used for the maintenance of a bridge across the Tigris.[157] Such was also the purpose of a khan in one of the legal opinions issued by Ibn Taimiya (d.728/1328), an inn the income of which was destined to

pay the stipends of the waqf beneficiaries.[158]

Besides these functions, the khan also served as dormitory for out-of-town students attending a masjid-college of law. In the first half of the fourth / tenth century, we find such a khan founded by the wealthy merchant Di'lij b. Ahmad b. Di'lij. It was located in Suwaiqat Ghalib (The Small Market of Ghalib), near the Tomb of Suraij, the celebrated Shafi'i jurisconsult. Di'lij made this khan waqf for Shafi'i students of law. In the second half of the fifth / eleventh century, on his first visit to Baghdad, Nizam al-Mulk reconstructed the khan and made a contribution of one hundred dinars to the waqf. This was on the occasion of a visit made to him by a delegation consisting of the disciples of the Shafi'i jurisconsult, Abu 'l-Fadl 'Abd al-Malik b. Ibrahim al-Hamadhani (d.489 / 1096), soliciting his financial assistance. This information is given by the son of Hamadhani, Abu 'l-Hasan Muhammad (d.521 / 1127), who states that the khan was still serving as such for Shafi'i students of law down to the date of his writing.[159] In the second half of the fourth / tenth century, and over a period of three decades, a vast network of khans for students of law were endowed by Badr b. Hasanawaih.[160]

In the first and second halves of the fifth / eleventh century, khans are cited for this same purpose in Baghdad, on both the east and west sides of the city. As, for instance, the khan of the Hanafi students of law in the quarter of the Fief of Rabi', on Baghdad's West Side which was burned and its rooms looted in the year 443 / 1051-2.[161] The Shsfi'i students of law had such a khan in the fashionable quarter of Bab al-Maratib, on Baghdad's East Side, located opposite the masjid-college of law whose professorship was held by Abu Ishaq ash-Shirazi (d.476 / 1083), up to the time when he became the first professor of law of Baghdad's Madrasa Nizamiya. This khan served as a dormitory for the Shafi'i students of law attending Shirazi's masjid-college, and there were ten to twenty disciples living there.[162]

The khan as an inn is also known to have been used for private teaching or tutoring; as in the case of a jurisconsult, a stranger in town, who rented the upper-floor room in order to give lessons on law.[163]

b. Institutions Inclusive of the Foreign Sciences

1) The Libraries

The various institutions cited under this rubric were essentially libraries, not locales for the teaching of regularly constituted courses of study. Y. Eche made an excellent study of these institutions.[164] Six words are involved in the terminology used to designate them. Three of these designate locales: bait (room), khizana (closet), and dar (house); and three relate to content: hikma (wisdom), 'ilm (knowledge), and kutub (books). From a combination of these words Eche derives seven terms designating libraries: bait al-hikma, khizanat al-

hikma, dar al-hikma, dar al-'ilm, dar al-kutub, khizanat al-kutub and bait al-kutub. Two others may be added: bait al-'ilm,[165] and al-khizana al-'ilmiya.[166] Thus, all possible combinations of these terms were, in fact, used.

Each divided the history of these institutions into two periods: the period of Bait al-Hikma, and the period of Dar al-'Ilm. This division, although probably justifiable, can only be regarded at this stage of our knowledge as one personal to the author, based more on intuition than on historical facts. The difficulty is that at the present stage of documentation, the sources belong, for the most part, to a period later than that of the institutions treated; moreover, the terms in these sources were used interchangeably, and perhaps anachronistically. Some examples will serve to illustrate these points.

The Bait al-Hikma founded by the caliph al-Ma'mun[167] was often called Khizanat al-Hikma.[168] 'Ali b. Yahya al-Munajjim (d.275 / 888) is said to have collected a library for al-Fath b. Khaqan (d.247 / 861); the texts here identify Khizanat kutub with hikma and khizanat hikma.[169] The same al-Munajjim is said to have had a palatial residence in which there was 'a great khizanat kutub which he called Khizanat al-Hikma'.[170] Speaking of the library of Ja'far b. Muhammad al-Mausili (d.323 / 935), Yaqut said that he had, in his town of Mosul, a Dar al-'Ilm in which he made a khizanat kutub of all fields of knowledge.[171] Al-Khatib al-Baghdadi, speaking of 'Ali b. Muhammad al-Bazzaz (d.330 / 942), said that he had a bait 'ilm.[172] Sabur b. Ardashir (d.416 / 1025) bought a dar (residence) in Baghdad in 381 / 991, stocked it with more than ten thousand volumes in all fields of knowledge and called it Dar al-'Ilm.[173] The tenth-century geographer al-Maqdisi, in speaking of Ramhurmuz, said that there was in it 'a *dar kutub* like the one in Basra and *both dars* belonged to Ibn Sauwar... however, the *khizana of Basra* was greater, more frequented and had more books'.[174]

Yaqut speaks of the Dar al-Kutub (not a khizana) belonging to Taj al-Mulk in the great Mosque of Isfahan[175] in the seventh / thirteenth century. The sixth / twelfth-century Abu 'l-Ma'ali al-Bazzaz (d.539 / 1144) built a *khizana* in a ribat and instituted his books as waqf in it.[176] The library in the Shrine College of Abu Hanifa in Baghdad is referred to by the sixth / twelfth-century Ibn al-Jauzi as a dar al-kutub,[177] and by the eighth / fourteenth-century Ibn Abi 'l-Wafa' (d.775 / 1375), as a khizanat al-kutub.[178] The library of the Madrasa Nizamiya of Baghdad was called by one author, Dar al-Kutub,[179] and by another author for the Madrasa Nizamiya of Nishapur, Khizanat al-Kutub.[180] In referring to libraries in Muslim cities, Yaqut uses the term khaza'in, singular khizana.[81]

In the library which he called Khizanat al-Hikma, 'Ali b. Yahya al-Munajjim received visitors who came to study the books in his

library, giving them food and lodging, at his own expense. Nothing is said here of a waqf, or charitable trust, set up in perpetuity.

In the Dar al-ʿIlm of Jaʿfar b. Muhammad al-Mausili, the books were made waqf for the use of seekers of knowledge; no one was to be prohibited from access to the library 'and when a stranger came to it seeking culture, if he happened to be in financial straits, he [Mausili] gave him paper and money'.[182] Here, the books were made waqf for the use of seekers of knowledge without exception, and they were helped financially on an individual ad hoc basis.

In speaking of the Dar al-ʿIlm founded in 381 / 991 or 383 / 993 by Sabur b. Ardashir, Ibn al-Jauzi reported the terms of the waqf: four persons were put in charge of it as trustees and caretakers. There is no mention of professors and students as beneficiaries, nor any mention of regular courses of study.[183] When this library was burned and looted in 451 / 1059, it was replaced with a *dar kutub* founded by the historian of Baghdad, Ibn Hilal as-Sabi (d.480 / 1088), in Rajab 452 (August 1060), who supplied it with approximately one thousand volumes, his declared reason being that he feared the disappearance of knowledge with the loss of the *Dar al-ʿIlm* of Sabur b. Ardashir.[184] He appointed a librarian for his library which was frequented by men of learning for many years. Then he dismissed the librarian, erased the mention of waqf from its books and sold them. When this unlawful action was disavowed, he answered that the library was superfluous next to the library of the (newly founded) Madrasa Nizamiya. When he was told that the sale of waqf books was forbidden by the religious law, his answer was that the proceeds from the sale were distributed as alms to the poor.[185] The waqf of this library concerned the books and the library staff; no mention was made of regular courses of study, professors or students. The function of this library, originally founded to replace the Dar al-ʿIlm of Sabur b. Ardashir, was the same as that of the library of the Madrasa Nizamiya, namely the furnishing of books for the seekers of knowledge.

The activities that took place in libraries were those involved with books, such as reading and copying. Meetings were known to have taken place there for the purpose of discussion, disputation and the like. As for the actual teaching of courses, one rare case is known regarding the library in Basra cited by the geographer al-Maqdisi when he compares it with that of Ramhurmuz. Here al-Maqdisi cites the activities of both libraries: for those seekers of knowledge who came to these two libraries and assiduously read and copied books, subsistence was given them, the difference between the two libraries being that the Basrian library was greater, more frequented and had more books. Then the passage continues – and this is the thing of rare occurrence: 'and in this one [the Basrian library] there is perpetually a professor under whom one may study Kalam-theology according to

the doctrines of the Mu'tazilis'.[186] This, according to al-Maqdisi whose work was written in 375/985, was happening in Basra, away from Baghdad, the cultural centre of Islam. It was not a central function of the library, but an added feature available for those who asked for it. Nothing is said of students or staff living on the premises as beneficiaries of a waqf and following regular courses of study leading to certification for teaching. These institutions were libraries essentially; nothing in the sources allows us to assimilate them to colleges.

Regarding the two sets of terms used in nine combinations, two remarks seem to be called for by the foregoing statements: (1) the first term of the combination, bait, dar, or khizana, seems to have been interchangeable; and (2) of the terms which came second, hikma gave way to 'ilm, and 'ilm to kutub (books), this last being the most appropriate, since the institution was essentially a library, not a college in which courses were regularly taught and led to a licence to teach. After the Inquisition, a gradual process set in, in which the term hikma, representing the philosophical sciences, was cast aside, and the term 'ilm was pressed into service by the traditionalists, in order to represent the Islamic religious sciences and their ancillaries.

2) The Hospitals

It is known that hospitals, maristan, were also schools of medicine. Ibn Abi Usaibi'a (d.668/1270), speaking of the physician Ibrahim b. Baks, said that he taught medicine in the 'Adudi Hospital, built by the Buwaihid 'Adud ad-Daula.[187] This same biographer of physicians writes of Zahid al'-Ulama who built a hospital in Maiyafariqin and of the medical course established in this hospital.[188] Also, there was a work containing a certificate of audition written and signed in the 'Adudi Hospital in Baghdad where the work was studied in the fifth / eleventh century.[189]

3. The Madrasa and Cognate Institutions

a. The Madrasa

The madrasa was the Muslim institution of learning par excellence. As such, it was a natural development of two previous institutions: the masjid, in its role as a college of law, and its nearby khan, as the residence of the law students in attendance. The development of this college was made in three stages: from the masjid, to the masjid-khan complex, to the madrasa. The masjid involved in this development was that in which the teaching was devoted to law as its primary subject. The basic law course of the masjid, usually lasting a period of four years, required a place of residence for the law students who came to it from out-of-town; whence the development of the masjid-khan complex. From this complex to the madrasa there was but one simple step. The essential difference between the second and third stage of development is to be found in the legal status of the masjid and that of the madrasa. Both institutions were based on the law of waqf, charit-

able trust. As already mentioned, the masjid, once instituted as waqf, became free of its founder's control. Its waqf was said to be a *waqf taḥrīr*, 'a waqf of emancipation'. The relationship between it and its founder was thus likened to that existing between an emancipated slave and the emancipating master who relinquishes his rights over him. In contrast, the madrasa came under the control of its founder, and that of his descendants, in perpetuity, if he so desired.

In the foregoing pages, the masjid was seen to have had its rise with the rise of Islam. The masjid-khan complex developed on a large scale in the fourth / tenth century. The madrasa, developing in this century, flourished in the fifth / eleventh century. Such was the general development of these institutions as may be seen in the sources available. It is a development which may be traced through Muslim philanthropic activity during these centuries.

From early times on, rulers (caliphs, sultans, maliks, emirs, wazirs, etc.) as well as wealthy merchants, and professors with private means, gave support to scholars. Some of these benefactors were possessors of great wealth, and practised their philanthropy on a large scale; others, not so wealthy, practised it on a more modest one. Isolated charitable gifts by men of modest means may have created an institution of learning earlier than the dates here considered. This should be granted if only to avoid the pitfall of arguing from silence in an area where the sources are anything but adequate. But there is a better reason for granting this: the foundation of certain institutions on a large scale is usually preceded by their prior foundation in isolated instances. Considerable sums of money are usually invested in institutions only after they have proven to be successful and socially desirable.

Throughout the centuries, philanthropists expended great sums of money on objects socially and religiously desirable. Such sums were provided for distribution among the poor, the widows and orphans; for the shrouding of the dead; for the pilgrims to Mecca and their various needs; for camps and relay stations, and wells and supplies of fodder, all along the pilgrims' road; for the upkeep of the sanctuaries; for individual scholars, or groups of scholars, and such like. But this category of philanthropy was of a transitory, fleeting character; good for as long as it pleased the donor to give, or for as long as he lived, but cut off with his displeasure, his dismissal from office, or his death.

It was not this category of philanthropy that brought institutions of learning into existence. These institutions came into existence after the institutionalization of charity for purposes of education by the law of waqf.[190] With the waqf, institutions of learning were made perpetual, and independent, in some cases, of the donor himself, and in all cases, of the donor's life-span. This type of philanthropy occurred on a very large scale in the fourth / tenth century.

The early masjids cited previously[191] belonged to the eighth and

ninth centuries, perhaps earlier. How much earlier is not known, may never be known, exactly. What is certain is that the masjid was the first type of college in Islam, and that it was a charitable foundation governed by the law of waqf. As a charitable foundation, it was endowed, and the income of the endowment paid the salary of the professor who was usually its imam, or leader of the prayer. When the professor was paid from the endowment income, the student benefited in that he had no tuition to pay; but he had to provide for his own lodging and subsistence.

Among the wealthy philanthropists of the tenth century the name of Badr b. Hasanawaih al-Kurdi stands out as one of the most significant for the history of Islamic institutions of learning. His father, Hasanawaih, who died in 369/979,[192] a man of power and influence, is said to have expended great amounts on alms-giving. But neither he nor any of the other philanthropists of that century were cited for having endowed institutions of learning on a large scale. Among them were the mother of the caliph al-Muqtadir, known as as-Saiyida, the Grand Dame (d.329/933), whose annual income from her estates is said to have amounted to one million dinars;[193] Bajkam the Turk (d.329/941) who held the title of *amīr al-umarā'*, a title which was the precursor of that of sultan, and who began the construction of the great hospital in Baghdad;[194] the Buwaihid ʿAdud ad-Daula who completed the construction of that hospital;[195] as-Sahib b. ʿAbbad (d.385/995), wazir and patron of learning;[196] and other philanthropists of lesser renown, such as Diʿlij as-Sijistani (d.351/962), who established masjids in Baghdad, Mecca and Sijistan.[197] His masjid-college in Baghdad, which bore his name,[198] was located in the Fief of Rabiʿ, on Abu Khalaf Road of Baghdad's West Side.[199]

With Badr, however, there was a new development. When his father died in 369/979, Badr was appointed in his place as governor over several provinces, by ʿAdud ad-Daula. The length of his tenure was thirty-two years.[200] As in the case of his predecessors, he established pensions, gave alms to scholars, to the poor sharifs, to orphans and to the poor masses. He spent considerable sums in connection with the pilgrimage to Mecca.[201] In all of this, there was nothing essentially different from previous philanthropy. When Badr died, this side of his philanthropy died with him: the beneficiaries suffered, and the pilgrimage was cut off, the roads no longer being safe, now that annual payments had ceased for the safe-passage guarantee of the pilgrims.

However, Badr established one type of institution, which was of a more permanent character. Its permanence and widespread character constituted an advance of great significance in the history of Islamic institutions of learning. Badr established throughout the realm of his administration three thousand masjid-khan complexes: these

were masjid-colleges, with adjacent khans for out-of-town students. This information is found in a passage in Ibn al-Jauzi's chronicle. It is the first known text to mention a development of such magnitude. It runs as follows: Istaḥdatha fī a'mālihī thalāthata ālāfi masjidin wa-khānin li 'l-ghurabā' (He [Badr b. Hasanawaih] built anew, in the provinces of his administration, three thousand masjids and khans, [the latter] for those away from home.)[202] The masjid-khan complex can be identified as such thanks to a description given by one of its student residents in Baghdad, in the second half of the eleventh century.

The student, Abu 'Ali al-Fariqi (d.528/1134), was from out-of-town, and had come to Baghdad to study law under the direction of the great Shirazi who was soon to occupy the chair of Shafi'i law in the soon-to-be-built Madrasa Nizamiya of Baghdad. Meantime, Shirazi was teaching law in his masjid-college with its adjacent inn. The year was 456/1064, one year before ground was broken for the new Nizamiya. The following text is an autobiographical note of the student describing the situation as it existed in that year. Here is what he said:

> I took up residence in a khan facing the masjid of Abu Ishaq [ash-Shirazi] in the quarter of Bab al-Maratib wherein resided the fellows of the Master and the law students studying under his direction. When we were many, there were about twenty of us; when we were few, there were about ten. Master Abu Ishaq was teaching us the law course [ta'liqa] in a period of four years; so that when the law student had learned his course during this period of time, it was no longer necessary for him to study anywhere else. He used to give us a lesson following the morning-prayer [ghada'], and another following the prayer of nightfall ['isha']. In the year 460 [A.D. 1068], I crossed over to the West Side (of Baghdad) to Master Abu Nasr b. as-Sabbagh and studied his [legal] work *ash-Shāmil* under his direction; then I returned to Abu Ishaq and became his fellow [sahib] until he died.[203]

Other texts throw light on the function of the khan next to the masjid. One historian of Baghdad describes an uprising by the inhabitants of the Karkh quarter in the following terms: 'When [they] had learned what had happened, they went to the khan of the Hanafi fellows and scholars in the Fief of Rabi' and seized what they found, setting fire to the khan and taking the houses of the lawyers by surprise'.[204]

The Fief of Rabi' was a populous quarter of the city.[205] It had masjid-colleges for the Hanafi and Shafi'i students of law. There were nearby inns for the law students and professors, built near the masjids as residence halls. Such was the case with the masjid of Shirazi, with

its inn facing it and the ten-to-twenty students residing there. This number is typical of the number of students attending any of the colleges of law that were later to be founded; and the fluctuation in their number was due, no doubt, to the fluctuation in the endowment income.

The masjid-inn complex undoubtedly existed before Badr b. Hasanawaih built them on such a grand scale. This is known to be the case later with the madrasas which preceded Nizam al-Mulk's vast network of madrasas. Badr's foundations constituted a great step forward in the development of institutions of learning, especially as regards the provision of lodging for students. There might be some question about whether students were provided with food. One is inclined to believe that both food and shelter were provided in Badr's masjid-khan complexes. The fact that the sources supply many cases of students who had still to provide for their own subsistence in later times does not clearly prove that Badr's resident collegians were not receiving both food and shelter. Colleges usually admitted a maximum of twenty students in this early period as well as later, with few exceptions. Students who were not college residents had to put themselves through college by working at various jobs.[206]

The most significant aspect of this stage of institutional development is that it foreshadowed the development of the madrasa. The transition from Badr's vast network of masjid-inn complexes to Nizam al-Mulk's vast network of madrasas is seen most clearly in the example of Baghdad with the foundation of the Madrasa Nizamiya in 459/1067.

One of the values of the autobiographical note of al-Fariqi, quoted above, lies in the dates cited: 456/1064 and 460/1068. These dates cover the transition made in Baghdad from the masjid-college and its inn to the madrasa-college combining both. For Fariqi and his classmates, it meant complete financial support for their scholarly pursuits.

It should be noted, in this regard, that Shirazi had at first refused to accept the chair of law in the new Nizamiya for reasons discussed elsewhere[207] at length and which had to do with the misappropriation of materials used in the construction of the madrasa. For twenty days, his rival Ibn as-Sabbagh had occupied the chair to the delight of the latter's students, no doubt, but to the distress of Shirazi's students, who threatened to leave him and follow Ibn as-Sabbagh (d.477/1084) unless he accepted the chair which was rightfully his. Shirazi finally accepted; his refusal would have meant a serious financial loss for his students.[208]

The innovation of the madrasa was one that involved the legal status of the institution, not the curriculum. As far as studies were concerned, they remained the same. Thus the fact that madrasas were first instituted outside Baghdad had nothing to do with the level of

culture of the regions in which they were founded. Baghdad was, and remained for long, the cultural centre of the Muslim world. What it did mean was that Nizam al-Mulk and the Saljuqs were strong enough to found such institutions in Baghdad, encroaching upon the patronage of the caliph in his own backyard. Before them, madrasas founded by powerful patrons were confined to areas outside Iraq.

Neither Badr nor Nizam were innovators when they established their networks of institutions of learning.[209] They made use of a successful institution already in existence, taking their lead from the ulama themselves whose wishes they were eager to grant in return for their influence as jurisconsults and with the masses of their followers. Rather than innovators, Badr and Nizam were great statesmen and consummate politicians. Any incumbent of a high office, who could maintain himself there for three decades, in those turbulent days when high positions, highly competitive, were coveted by ambitious rivals, often stopping at nothing to unseat the incumbent – such a man was indeed a political genius. Badr was governor over several provinces for thirty-two years; and Nizam, for thirty years, a prime minister under two of the great Saljuqs. These two master politicians knew how to harness the steeds of power and keep a firm grip on their reins. The ulama indebted to their largesse were a guarantee of their continued success. In return, the ulama were provided for, and the schools of law to which they belonged found the colleges to be excellent recruiting centres for their respective madhabs. Between an institution which provided for the student and another that could not, the student in need had little difficulty in choosing between the two, and, in doing so, he had to embrace, as his own, the madhab represented by the institution.

The development of the college in Islam went, therefore, from the masjid, to the masjid-inn complex, to the madrasa and other like institutions. At some point in the second/eighth century or earlier, the masjid had become a college providing salaries for its staff, and gratuitous tuition for the student. The masjid-inn complex went a step further and provided the student with lodging and perhaps food. Finally, the madrasa provided him with all his essential needs for learning.[210]

b. Cognate Institutions

The most desirable type of foundation in Islam, and the most highly meritorious, was the mosque. But the restrictions imposed by its legal status hindered its adaptation to the developing needs of educational institutions. Although a creation of its founder, the masjid was independent of him. This situation tended to discourage their foundation as colleges. While founders wished to have their institutions serve the needs of worship as well as those of study, they preferred to accomplish these purposes while continuing to exercise control over the

career of their creation, and to pass that control down to their descendants to the end of their agnatic and sometimes cognatic lines. Various ways were therefore tried over the years to reconcile these conflicting needs, resulting in a variety of solutions often involving the mosque in one way or another.

The legal status of mosques was radically different from that of other institutions. The Koran declares them as belonging to God: wa-anna 'l-masājida li 'llāh (LXXII, 18). They can neither be sold, nor rented, nor put to private use, as D. Santillana, citing Zurqani (d. 1122 / 1710), states, 'Non possono essere nè venduti, nè locati, nè adibiti ad uso privato (salvo alcuni casi, per esempio per l'insegnamento delle scienze sacre)'.[211] Once the property was made waqf, all the founder's rights ceased to exist, except in the case of a masjid-college, when the founder could stipulate regarding staff and studies, but could not control his foundation as mutawalli.

The following legal opinions will illustrate these points. A fatwa was solicited on the question whether the qaiyim could build shops in the precincts of the masjid in his care. The jurisconsult's answer was: lā yajūzu lahū an yaj'ala shai'an mina 'l-masjidi maskanan an mustaghallan (It is not lawful for him to make any part of the masjid a residence or a source of revenue).[212] Another fatwa was solicited from Taqi ad-Din as-Subki on the question whether a madrasa could continue to lodge students after becoming a madrasa and masjid combined (al-madrasa hal tastamirru sakanan ba'da ṣairūratihā madrasatan wa-masjidan?).[213] The question points to the illegality of using a masjid as a residence.

Taqi ad-Din as-Subki (d. 756 / 1355) likens the waqf status of a mosque to that of a manumitted slave: just as the master, in freeing his slave, no longer retains any rights over him, so also the founder of a mosque; once the mosque is instituted as waqf, the founder no longer retains any rights over his property. Such a foundation is a *waqf taḥrīr*, a waqf assimilated to the manumission of a slave.[214]

Because of the foregoing considerations, the mosque, whether jami' or masjid, continued to be founded as an institution of learning in conjunction with a madrasa or its cognate institutions.

Cognate institutions began to be founded in earnest in the sixth / twelfth century. These were: dar al-hadith, dar al-qur'an, and the monastery colleges, called ribat, khanqah, zawiya, turba, duwaira. Strictly speaking, the ribat is known to have existed in the first half of the second / eighth century, and a dar al-qur'an is said to have been founded in Damascus around the year 400 / 1009. But the ribat began to flourish as an institution of learning after the madrasa, in the fifth / eleventh century. The masjid served previously as an institution of learning for Sufis, with hadith being the vehicle of Sufi studies. This first dar al-qur'an was without a sequel until close to the turn of the

seventh–eighth centuries (thirteenth–fourteenth centuries of our era).

As the staff of a masjid consisted of at least an imam, leader of the prayers, the staff of a madrasa consisted of at least a mudarris, who belonged to one of the four Sunni madhhabs. But from the early madrasa several variations developed: (a) the double madrasa; (b) the triple madrasa; (c) the quadruple madrasa; (d) the madrasa with a masjid; (e) the madrasa with a jami'; (f) the madrasa with a dar al-hadith; (g) the madrasa with a turba; (h) the madrasa with a dar al-hadith and a turba; (i) the madrasa with a khanqah; (j) the madrasa with a ribat; (k) the madrasa with a maristan; (l) the madrasa-medical school; (m) the madrasa-zawiya.

The variations of the cognate institutions were the dar al-qur'an with a jami', and the dar al-qur'an with a madrasa; the dar al-hadith with a madrasa and a ribat, and the dar al-hadith with a khanqah; the ribat with a jami', the ribat with a madrasa, and the ribat with a masjid and mausoleum; the turba with a masjid, the turba with a masjid and a maktab, the turba with a masjid and a ribat and maktab, the turba with a jami' and madrasa, the turba with a library, and the turba with a madrasa and a library.

Another type of institution was the mashad-college which consisted of a masjid and shrine of a Muslim saint. The most famous of these was the Shrine College of Abu Hanifa, rival of the Shafi'i Nizamiya Madrasa, both founded in the same year, 459/1067, in Baghdad. The Shrine College of Abu Hanifa consisted of a dome over the tomb of Abu Hanifa, a masjid and a madrasa, and was referred to variously as mashad, masjid or madrasa. The Hanafi school of law had an earlier shrine college, called Mashad Darb 'Abduh (The Shrine College of 'Abduh Road). This shrine college had a masjid. To judge by the names of the professors who taught there, its foundation went back to around the middle of the fourth/tenth century.[215] It seems to be the same institution referred to as the Masjid of Abu Bakr Muhammad b. Musa al-Khawarizmi on Darb 'Abduh, which had a residence facing it.[216] This Khawarizmi was one of the professors listed as having taught in the Shrine College of Darb 'Abduh.[217] A third such institution of the Hanafis was the Shrine College of the Prophet Yunus founded for a jurisconsult who was a student of Abu 'Abd Allah ad-Damaghani (d.478/1085), therefore in the second half of the fifth/eleventh century.[218]

The choice of the type of institution to be founded, whether simple or complex, belonged to the founder. All institutions of learning were based on the law of waqf, a study of which, as it applied to these institutions, is given in the following section for a better understanding of their rise and development.

III. THE LAW OF WAQF

A study of the law of waqf, as it pertains to institutions of learning, affords us indispensable insights into these institutions. Basic information can also be found in the extant deeds of foundation. Unfortunately, of the deeds which have come down to us, very few date from early times; they increase gradually in number only as they become more recent in date. The earliest deed of importance is that of the Madrasa Nizamiya of Baghdad, which has reached us in a fragmentary state. Under the circumstances, the fatwa-works are more instructive; these are collections of legal opinions regarding various questions arising in connection with institutions of learning. Some of these collections yield much information of fundamental importance to the subject in hand; yet their value as historical sources is limited, as will be seen presently.[219]

1. The Founder

a. Qualifications

The founder, waqif, of a charitable trust, waqf, had to have certain qualifications. He had to be of age, of sound mind and own, outright, the property he intended to declare waqf. Many founders were blamed for misappropriations in this regard.[220]

b. Founder's Freedom of Choice

The founder was given wide latitude in the establishment of his foundation. This was in keeping with the individualistic character of the law. 'Islamic law', wrote Schacht, 'in its technical structure, is thoroughly individualistic. This shows itself, for instance, . . . even in the institution of *waqf*, the social effects of which have been very considerable, but which, in its technical function, is strictly individualistic, in so far as the provisions laid down by the founder have the force of law'.[221] This fact is expressed in the oft-repeated general principle in fatwas and works on waqf: nuṣūṣ al-wāqif ka-nuṣūṣ ash-Shāri' (the provisions of the founder are as binding as those enacted by the lawgiver – meaning, God).[222] The interpretation given this general principle called for caution on the part of Ibn Taimiya. He explained this statement as meaning that the two are alike as to how they should be understood and as to their evidenciary value, but not as to the obligation of following them. For the statements of God and the Prophet are more binding, binding absolutely; whereas those of the founder must meet the requirements of the law before they can be followed to the letter.[223] But it is quite clear that the founder's wishes were respected by the law. Anyone who familiarizes himself with the legal opinions of medieval jurisconsults regarding matters of waqf will soon become aware of the fact that the terms of a waqf instrument were sacrosanct and were to be followed when known. Classical Islamic law saw to that; it saw to it, unless the law was thwarted, as it

sometimes was; but that was the exception to the rule and called forth the censure of the community.

The founder imposed his will as regards the administration of the foundation, the appointment of trustees, the designation of beneficiaries, the distribution of income. He could choose to reserve power to himself alone as trustee, stipulating that after his death his descendants assume the post to the end of his line, or he could designate someone else to the end of his line. He could make modifications in designating the beneficiaries or distributing the income, stipulate his power to increase or diminish the shares of beneficiaries, deprive a beneficiary of his share, add or exclude beneficiaries. He could further stipulate that such power to alter and modify the conditions of his waqf be exercised repeatedly.

Thus the founder was, practically speaking, unfettered in his freedom of choice. This is not surprising since the property he dedicated to his charitable foundation had to be his own. This is why he could choose the manner of distributing his bounty; for instance, restricting it to a certain segment of society, by founding a masjid or a madrasa for one of the madhabs to the exclusion of the others.

c. Limitation of the Founder's Freedom of Choice

There was one general restriction to the founder's freedom of choice: the terms of the waqf instrument could not in any way contravene the tenets of Islam.

Ibn Taimiya went further. He considered the stipulation of the founder valid if it was for the sake of God, in obedience of Him and of His Apostle. If not, then the stipulation was not binding (lam yakun sharṭan lāziman), even if it were an indifferent act (mubāḥan) in the eyes of the law. Wealth was indifferent in the eyes of the law, but a waqf instituted for rich people was not lawful. If there was no good of any kind in the work stipulated, either spiritually or materially, then it was invalid by general consensus; for example, that the beneficiary of a waqf should be obliged to eat a certain kind of food, or to wear a certain kind of clothing, or to live in a way not deemed desirable by the religious law, or to forsake certain works which it deemed desirable.[224]

Once the waqf instrument was drawn up and the waqf created, the founder could no longer change its terms. He, himself, was also bound by them. If, for instance, he had failed to make provision for a trustee, then the power of appointing one became that of the qadi, for no trust was allowed to fail for want of a trustee. The qadi was in fact the overseer who had the power to rule on matters not covered by the waqf instrument; and he did so by following the custom of similar institutions in all matters regarding which there were no provisions in the waqf instrument.

The founder could not use the waqf in order to benefit from it

personally, unless that benefit was his due compensation for services rendered. A case is cited in Haitami where a piece of land was made waqf for a masjid. The founder specified the amount of produce which was to go to the masjid annually; he assigned to himself the trusteeship of the waqf, his wish being that what remained of the produce, after the annual share of the masjid, was to revert to himself and to his successor after him. The legal opinion regarding this waqf was that if the part which the founder assigned to himself did not represent his just compensation for the trusteeship, the waqf was null and void (baṭala 'l-waqf). If, on the other hand, the part he made over to himself amounted to the normal salary of the trustee (qadr ujrat mithlih), the waqf was valid; it was not, if in excess of it.[225]

This being the case regarding the founder's discretionary powers, it is quite clear that one must be circumspect in generalizing with regard to institutions of learning. What may be true of one institution may not be true of another. They shared in a great number of characteristics, but their differences could also be great – hence the need for monographs on individual institutions; monographs based on the terms of the waqf instruments, when these are extant, but also on the historical facts; for there may have been significant departures from the waqf instrument depending upon the career of each institution, and the mismanagement to which it may have been subjected. However, as already mentioned, the instruments of waqf are few in number, and there is little that is said about them in the chronicles, or even in biographical works. Another source of information is the collections of legal opinions regarding matters of waqf, in the fatwa-works. Some of the collections are of great assistance, while others treat institutions briefly, and some, not at all. One must avoid here the tendency to consider a fatwa as a statement of fact. It was merely a legal opinion; it may or may not have been put into execution. The opinion seldom ever gives the identity of the institution of learning concerned. Moreover, one must not generalize from one institution to another by analogy; for according to Taqi ad-Din as-Subki, reasoning by analogy was not valid in matters of waqf (al-qiyās lā yuʿmal bihī fī 'l-auqāf).[226] Nevertheless, the fatwa remains an important source of information, since it was a response to a question raised concerning matters of current concern, and the opinions collected were usually authoritative, having in most cases passed the test of time.

The law of waqf was generally the same for all Sunni schools of law; but there were some differences. One of these differences determined the direction taken by the development of the Maliki madhab and its institutions of learning. As already indicated, the founder could reserve to himself the administration of his waqf for the remainder of his life, and to his successors to the end of his line. This rule was not adhered to in Maliki law, which prohibited the founder from con-

stituting himself as administrator of his own waqf. To my mind, this Maliki principle was a factor in the decline of this school in Baghdad in the Middle Ages at a time when the other schools were benefiting from the new madrasas as recruiting centres. This principle explains also why the Malikis, found chiefly in North Africa and Spain, never had any madrasas in Baghdad, nor are they known to have had any elsewhere in Eastern Islam, except in Syria. They were of rare occurrence in North Africa, including Egypt, and rarer still in Spain.[227]

2. The Corpus

The property intended for the waqf had to be tangible and immobile. There were certain exceptions, especially books. The property had to be clearly declared waqf by its owner. The declaration of waqf, in order to be valid, had to be irrevocable, unconditional, and permanent. Deeds of the waqf were kept by the qadi.[228]

Once made waqf, the property became inalienable. It could no longer be the subject of any sale, disposition, mortgage, gift, inheritance, attachment, or any alienation whatsoever, with one exception: it could be exchanged for equivalent property, or sold, subject to mandatory reinvestment of the price in another property (istibdal), if the founder had so stipulated in the deed of foundation, or if the original property fell into ruin or ceased to be productive so that the objects of the waqf could no longer be fulfilled.[229]

3. Objects of the Waqf

a. Charitable Object

The legal justification of a waqf was its charitable object, which constituted the basis of its validity. The fact that property was dedicated as waqf for the advancement of education, which in classical Islam was synonymous with the advancement of religion, was proof enough that its purpose was charitable, whatever else the founder may have had in mind.

Ibn Taimiya (d. 728/1328), in one of his collections of legal opinions, gives a list of waqf objects: colleges (madrasa), mosque-colleges (masjid), monasteries (khawanik), cathedral mosques (jami'), hospitals (maristan), monasteries (ribat), alms (sadaqa), release of prisoners of war from the prisons of unbelievers.[230] This is not a complete list; there were other objects, notably bridges.[231]

In comparing it to Western law, regarding its objects, Vesey-Fitzgerald writes that 'the law of waqf fills the place which in other systems is filled by the law of public, non-trading corporations (including, however, some trade guilds), religious and charitable foundations and trusts, religious offices, and family settlements. It is the only form of perpetuity known to Islam'.[232]

b. Declaration of Object and Other Considerations

The law considered as null and void the foundation which had no object. If the founder should simply declare that he instituted his

property as waqf, without declaring the object of his waqf, it would be null and void.[233] Nor could there be any suspensive condition, such as making the waqf's creation dependent upon a third party's action.[234] A conventional option annulled it, too.[235] The condition that the waqf cannot be leased did not annul it.[236] Leases of long duration were prohibited; the reason being that the person holding the lease could claim the property his own, and call upon his neighbours as witnesses to testify that he had occupied the property as long as they could remember. A masjid founded for a particular school of law, to the exclusion of others, was legal. In such a case, only members of that madhab could be its beneficiaries; the same was true of a madrasa or a ribat.[237]

A waqf for an illicit object was null and void; as, for instance, waqfs for the construction of churches and synagogues; not so a waqf for the poor, for learned men, for mosques, for madrasas.[238] An illicit object of waqf would be that of an institution of learning teaching doctrines inimical to the tenets of Islam.

The object of a waqf did not have to be perpetual, though the income of the waqf destined for charity had to be so. A valid waqf did not cease to exist when its charitable object came to an end. The income was simply applied to another similar object.[239]

4. Motives of the Founder

a. Qurba

The chief motive for establishing a waqf was qurba, drawing near to God, the desire to perform good works and to leave a legacy of such good works pleasing in the eyes of God who would not fail to reward the giver. Waqfs were abundant in Islam. They were an extension of the pre-Islamic Arabian virtue of generosity made all the more desirable for being a means of expiating one's sins and reaping the rewards of a happy afterlife. 'The motive of law in authorizing waqfs', writes Abdurrahim, 'is to enable the waqif or donor to secure spiritual advancement in the life to come and also popularity in this life in the same way as by gifts and bequests but in a higher degree.'[240]

b. Undeclared Motives

The true test of the validity of a waqf was in its declared object, not in the undeclared motives of the founder, if any. For these may very well be other than its declared object. Being the only form of perpetuity in Islam, waqfs were bound to serve other motives; for instance, to escape taxation, to thwart the excesses of a son's prodigality, or to gain control of the popular masses by having their religious leaders in one's pay. One of the chief motives for establishing a waqf was to escape confiscation. A saying current in the eleventh–twelfth centuries indicates that confiscations were a dreaded practice of princes: man manaʿa mālahū 'l-fuqarā', sallaṭa 'Llāhu ʿalaihī 'l-umarā' (he who withholds his wealth from the poor is made the target of princes by God).[241]

Anecdotes of confiscations abound in medieval chronicles and biographical works. Now and then, an emir would emerge who did not have a policy of confiscation; in which case, the chroniclers would announce that the people could make a show of their wealth without the risk of having it confiscated.[242] Such magnanimity on the part of an emir was worthy of mention. Another motive, undeclared, that of establishing institutions of learning with endowed chairs for learned men in order to gain through them the support of their followers, was practised by many personages of power and wealth, the more famous among them being Badr b. Hasanwaih and Nizam al-Mulk.

Ibn al-Jauzi censured jurisconsults who served men of power and influence, accepting their largesse and neglecting to call them to account for bad government. They claimed that they visited sultans in order to intercede for their fellow Muslims. They accepted their bounty in the full knowledge that their wealth was illicit. Even those who had a legitimate reason for visiting sultans, with good intentions, were in danger of becoming habituated to a life of ease, accepting emoluments, and ceasing to be in a position to censure their injustices. For men of power sought out jurisconsults because of their need for legal opinions issued in their favour.[243]

c. Misappropriation

The founding of waqfs was a good work highly regarded by the Muslim community. It earned for the founder, besides gratitude, prestige and power derived from patronage. He reaped the fruits of patronage from the ulama who brought him in return their loyal support and that of their followers. The more waqfs he founded, the broader the base of that support. Badr and Nizam al-Mulk and a great many others are examples of such founders. But there were many other founders of lesser renown who gave freely, sometimes all they possessed, to institute a charitable foundation as an act pleasing to God, and a means to salvation. It is hard to exaggerate the great social good resulting from waqfs which performed many of the services that fall to the public sector in modern states.

Unfortunately, good works are not always safe from corruption in any age or place. Charitable foundations were often used by unprincipled persons to serve their own corrupt ends. Founders whose desire for fame was matched only by their will for power by any means founded waqfs on a grand scale with properties not their own.[244] And as properties of great charitable foundations often yielded income far beyond the needs of their charitable objects, corruption often took place on the receiving end of these good works: the surplus often found its way to coffers for which it was not meant.

1) Some Cases

The mother of Caliph Muqtadir[245] once bought an estate – an act perfectly innocent in itself, were it not that the estate was waqf pro-

perty, and therefore inalienable. She asked the qadi for the waqf instrument in order to destroy it, her purpose at first being unknown to the qadi. He learned her intention in time, and, supported by the caliph himself, successfully resisted her demand.[246]

The two great madrasas of eleventh-century Baghdad, namely, the Shrine College of Abu Hanifa and the Nizamiya Madrasa, were built with materials misappropriated from other properties. The former was founded by Abu Sa'd al-Mustaufi (d.494/1101), the Hanafi financial agent of the Saljuq Alp Arslan (reign: 455-65/1063-72), and the latter by Nizam al-Mulk, Alp Arslan's and later Malik-shah's Shafi'i wazir. Both institutions were begun in 457 H. and inaugurated in 459 H.

Dubais, the Mazyadid, in 512/1118, wanted to repossess a dar, palatial residence, which the new caliph Mustarshid had annexed to the Mosque as waqf. He went to the chief qadi and to the jurisconsults asking for legal opinions. The chief qadi and a group of jurisconsults wrote their opinions to the effect that the property must be returned to its rightful owner, and the deed of its waqf be made null and void. Armed with this opinion, Dubais submitted it to the caliph, asking that his property be restored to him. As proof of ownership he produced a document, duly registered in the archives of the chief qadi, to the effect that his father bought it from the agent of the former caliph Mustazhir for the sum of fifteen thousand dinars, and that a sum of eighteen thousand dinars was spent on it for improvements.[247]

The wazir of the Saljuq sultan Mahmud, Abu Talib as-Samirami (d.516/1122), was a man who openly committed injustices in the community. He once stripped the buildings of the entire quarter of at-Tutha in Baghdad, using the materials to build his palatial residence on the Tigris riverside. When the people of the quarter pleaded with him, he imprisoned them, releasing them only upon payment of a fine. He was said to have made the following statements: 'I have prescribed for the people of Baghdad the law of despotism'; and 'I have spread out a carpet for myself in Hell'; and, 'Truly I am ashamed of my excesses against the people and my injustice towards those who have no protector'.[248]

In Mamluk Egypt instances of misappropriation abound; so much so, that the Egyptian historian al-Maqrizi seems to be heaving a sigh of relief whenever he can cite a case where misappropriation did not occur. As, for instance, in the case of the Madrasa Husamiya where its founder, the emir Husam ad-Din Tarantay al-Mansuri, refused to force a tailor to part with his property adjacent to the madrasa.[249]

Rukn ad-Din Baibars (regency: 708-9/1308-9) was praised by Maqrizi for not misappropriating a single thing for the monastery he was founding, or treating harshly any of the craftsmen who worked on its construction, or using forced labour.[250] The incidence of pressed

workers was not unusual, as in the case of adh-Dhakhira Mosque.[251]

Barsbay (regency: 825-42 / 1422-38) confiscated two waqfs of the great sultan Saladin, properties instituted as waqfs for the Madrasa Qamhiya, and gave them as fiefs (iqta‘) to two of his Mamluks.[252]

Yalbugha as-Salimi (d.811 / 1409), accompanied by a group of jurisconsults, helped himself regularly to the income from waqf properties of the Mosques and madrasas of Cairo.[253]

Maqrizi devotes a particularly long passage in his *Khiṭaṭ* to the scandal of Jamal ad-Din's madrasa for which property was misappropriated. The sultan had Jamal ad-Din arrested and put to death in 812 / 1409, and confiscated his wealth one year after the latter had inaugurated his madrasa. The sultan was advised to bring down the madrasa for its marble which was of great beauty, and to have its waqfs annulled and the properties returned to their rightful owners, the revenues being considerable. He was about to do so when his confidential secretary convinced him that his action would amount to a religious scandal, seeing that the five prayers were performed in its Mosque daily by a great congregation and that the divine law was being taught there, among other things. The madrasa was allowed to stand, but the founder's name was removed from it.[254]

Another lengthy report is given by Maqrizi[255] on the misappropriated character of the hospital, al-Maristan al-Mansuri. An interesting point about this case is that the jurisconsults issued legal opinions against the legality of performing the ritual prayers in it, reminiscent of the case of the Madrasa Nizamiya in Baghdad.[256] Maqrizi, after comparing this hospital with that of Nur ad-Din Zanki in Damascus, which had served as its model, goes on to make one of his summing-up statements regarding all places of misappropriated character, a statement the last part of which follows, ending on a note of mordant cynicism:

> And you, [dear reader], if you were to look closely and know what is taking place, it would become clear to you that the people involved are nothing but crooks stealing from crooks, and usurpers extorting from usurpers. But if abstaining from praying [on the grounds of the institution] is in protest against the tyrannizing of the workers and the exploitation of men, then that is something else again. I entreat you, in God's name, to tell me if I am wrong. But I know of no one among them who has not followed this path in his works, the only difference being that some are more oppressive than others.[257]

Such misappropriation was accepted as a fact of life, abetted by the shortage of building materials. It was not an unusual thing to erect a new building from the materials of others razed for the purpose; these were bought, or taken forcibly, from their owners. In the following century, Nur ad-Din Zanki (regency: 589-607 / 1193-1210)[258] took

pride in the fact that he never once laid hands on monies in the public treasury (bait al-mal) in order to found his numerous waqfs. It would be an empty boast if such misappropriation were unusual among men of power, or if the sultan were entitled to such monies for the purpose of instituting waqfs.[259]

2) Anger and Indignation of the Doctors

Taj ad-Din as-Subki throws further light on these matters in his valuable work *Mu'īd an-ni'am*. He casts a critical eye on the holders of contemporary posts from all walks of life, bringing out the weaknesses inherent in the position held, the pitfalls that must be avoided, and how best to carry out one's duties in accordance with God's law. The indignation which permeates his work is reminiscent of an earlier work by another jurisconsult and sermon writer, the Hanbali Ibn al-Jauzi, in his famous but sometimes misunderstood *Talbīs Iblīs*.[260]

In speaking of the sultan's duties and responsibilities, Subki says that he must give serious thought to the ulama and the poor and all others eligible for his aid, giving each his rightful place and seeing to his needs from the public treasury (bait al-mal) which is in his hands as a trust and regarding which he is not to consider himself as entitled to its contents. He must see to it that they receive their due from the waqfs founded for them. If he does not fulfil this obligation, but should, on the contrary, lay criminal hands on these waqfs, he would be compounding crime upon crime. How much greater would his crime and punishment be should he further allow the sale of these foundations and collect bribes for doing so, allowing these waqfs to be placed in hands other than those of their rightful beneficiaries, what then would be his punishment in the world to come![261]

It is clear that waqfs whose founders were dead could suffer from the depredations of the incumbent sultan, governor, or other official in power. Waqfs under these circumstances were no longer sacrosanct.

Subki then deals with the sultan's agents or representatives (nuwab) who follow the example of their leader in making the most of their positions for monetary gain.[262] They often excuse themselves by complaining that they must do as ordered by the sultan. Subki holds them responsible, their duty to uphold the law being as great as that of the sultan.[263] He goes on to deal with the wazir. His duty was to advise the sultan, to curb his cupidity, and do all in his power to restrain him from the unlawful seizure of properties.[264] Furthermore, the wazir was to exercise great care to see that of the wealth accumulated by the sultan, that which was lawfully gained was to be kept separate from the rest, otherwise the whole would be contaminated, and thus become unlawful for ulama to accept as emoluments from the treasury.[265] This explains why so many indigent religious scholars refused to accept money from men of wealth and power for the simple reason that they could not be certain of the lawful character of its

source. Another cause for refusal was to keep one's independence rather than sell one's piety and honour for silver and gold.

Subki's indignation was not feigned; like Ibn al-Jauzi before him, he had good cause to complain about, rather than condone, the abuses and vices of his day. And if one is to give credence to the sources, those of his day were great in number and frequent in occurrence. It is true that in reading the chronicles of the times, for instance, those of Ibn Kathir (d.774/1273) and al-Maqrizi, one cannot help but get the impression that Subki's period had more than its share. But this may not have been the case. Later historians appear much more conscious of the social ills of their times and were, generally speaking, less reluctant to report them. Moreover, it is easy to focus on scandals, plentiful in all societies, if one is of a mind to look for them. It can hardly be supposed that vices and abuses were the normal order of the day for the era of Ibn al-Jauzi in the sixth/twelfth century, and of Subki in the eighth/fourteenth, to the exclusion of former generations; so normal as to rouse their ire and cause them each to devote a special work to the subject. Other generations, no doubt, had their share, in spite of the reluctance of historians to report them. Reports are not altogether lacking; they are merely less frequent, or the object of allusion. Medievalists immersed in the literature of the time would hardly miss the message.

5. The Mutawalli

a. Qualifications

The mutawalli had to be a Muslim, legally responsible, able to carry out his functions with knowledge and experience. If weak, he was to be assisted by a strong trustworthy person (amin, 'trustee'). If control belonged to someone other than the one for whom the waqf was originally instituted, and he received his appointment from a qadi or the mutawalli, then he must be ʿadl, that is, he must have an honourable record; but if he was appointed by the founder, and was fasiq, that is, one with a dishonourable record, or was ʿadl and then became fasiq, his appointment would be valid, but a trusted person had to be appointed to assist him. A fasiq could be appointed, then dismissed if found guilty of fisq (moral depravity) during his tenure.[266]

If control was in the hands of the person for whom the institution was originally founded, either because the founder appointed him, or because he was the person most worthy of the post at the time of its vacancy, he was then considered the most worthy, whether a man or a woman, ʿadl or fasiq, because he exercised control for himself.[267] Others said a fasiq must have an amin to assist him. Al-Harithi (d.606/1209) says ʿadala, that is, an honourable record, is not stipulated, but a fasiq must have a trusted person working beside him, because this preserves the waqf and fulfils its terms. Such was also the opinion of three other jurisconsults.[268]

If control was in the hands of a person originally intended by the waqf and he was not qualified for the post, either because of his youth (sighar), or incompetence (safah), or insanity (junun), his legal guardian, wali, took his place as mutawalli. This applied where the waqf was owned originally by the person for whom it was instituted; otherwise the qadi became the mutawalli.

The person considered most qualified for the position of mutawalli was one who had not actively sought the appointment, and who was not known to be a fasiq. No person was to be made a mutawalli who was not trustworthy and capable of carrying out his duties personally or through his substitute, na'ib. The following were to be considered on an equal basis: males and females, the blind and those with eyesight; so also those convicted of false testimony if they have repented. The candidate had also to be of legal age and in full possession of his mental faculties.[269]

There was more than one term designating trusteeship: mutawalli, nazir, qaiyim, mushrif, mubashir. One waqf may have had more than one post designated by the same term, or by different terms. A madrasa endowed for two madhabs had three mutawallis, three nazirs and one mushrif.[270] Elsewhere, a waqf had a nazir and a qaiyim; another, only a qaiyim. The mutawalli appears to have ranked above the nazir when both were in the same foundation, and these two, above the qaiyim; but anyone alone in a foundation had the function of sole trustee, though jurisdictions may have varied. The term an-nazir al-mutawalli denoted a trustee with full powers, emphasizing his complete jurisdiction over the administration of the waqf. The terms mubashir (director, executive officer), and mushrif (supervisor, superintendent), implied appointments either as assistants to an incumbent trustee or as co-administrators, or as interim trustees. The functions of some of these posts are further clarified in fatwas treated in the section on rights and responsibilities.[271]

b. Appointment

A trustee, called mutawalli or nazir,[272] administered the waqf. Every waqf had to have a mutawalli, the principle being that no trust should fail for want of a trustee. The founder could name in the waqf instrument the first mutawalli and stipulate the manner of the appointment of successors. If for some reason the founder failed to appoint a mutawalli, the qadi then appointed a competent person.[273] If the founder appointed himself as mutawalli, but was not trustworthy, the qadi would then have the right to dismiss him, even if the founder had stipulated in the waqf instrument that the authorities could not dismiss him, for such a stipulation would be contrary to the law and would therefore be null and void.[274] Anqarawi (d. 1098 / 1687) cites two opinions, one by Abu Yusuf, another by Muhammad, two famous early Hanafi jurisconsults, regarding a waqf the control of

which was not entrusted to anyone. Abu Yusuf says control devolves upon the founder, because for him, delivery of the waqf is not a condition of validity; but with Muhammad such a waqf is invalid, and his is the rule that is followed in fatwas.[275]

When the mutawalli of a waqf died and the district had no qadi, the trusteeship devolved upon the ulama and the pious (sulaha') of the locality.[276] This legal opinion is based on the theory that waqfs are the property of God, and the ulama and pious are his vicegerents on earth.

A waqf could, of course, be refused by the person for whom it was instituted. Such a person was often also made the mutawalli, besides being offered the post of imam (in a masjid) or that of professor of law (in a masjid or madrasa). If he refuses, his refusal had to come before his acceptance of it. Refusal after acceptance was not valid, for the contract had been concluded. Such was the opinion of Abu Ishaq ash-Shirazi in his *al-Muhadhdhab*, and of Abu Nasr b. as-Sabbagh in his *ash-Shāmil* which makes a distinction between waqf and testament (wasiya) in such matters. This opinion was also that of other jurisconsults.[277]

After accepting appointment as the titular professor of the Nizamiya Madrasa, Shirazi refused to assume his post.[278] He could justify his refusal, after acceptance, because of the misappropriated character of the materials used in building the college.[279] When he finally accepted the post, he refused to pray in the college.[280]

According to Abu Ya'la (d.458/1066), in his *al-Aḥkām as-Sulṭānīya*,[281] the imam of great Mosques (al-jawami' al-kibar) was appointed by the caliph only; but in the masjids of the city's various quarters, the imam was appointed by the people of the quarter in which the masjid was located. Once appointed he could not be dismissed, unless for cause.[282] The causes were many, not the least of which was lack of trustworthiness as mutawalli. Instances were known where the mutawalli went so far as to claim the waqf property his own. In such cases, he was dismissed and another trustworthy person appointed in his place.[283]

According to Mawardi's *al-Aḥkām as Sulṭānīya*, the imam of a masjid was appointed by the qadi.[284] According to al-Harithi,[285] even in the case of masjids it is more correct to say that the caliph appointed, but with the agreement of the people of the quarter. So also in the case of a mutawalli appointing an imam for a masjid; the appointment should be with the people's approval.

To the question whether the quarter's inhabitants have the right to appoint a mutawalli for the masjid, the Hanbali jurisconsult al-Harithi answered that the evident rule of law was that they did not have this right, though they did have the right to appoint the imam and the muezzin. There were conditions under which the inhabitants

could appoint even the mutawalli; this being when there was no imam, nor a representative of the imam, as for instance in small villages and far-out places; or if there was an imam, but he was not trustworthy, or that he would be likely to appoint someone not trustworthy. Under such conditions, the inhabitants could appoint a mutawalli of their choice in order to fulfil the object of the waqf and avoid vitiating it. If it was impossible to appoint a mutawalli, then it was for the head of the village to act as mutawalli and to carry out the functions of this post freely because the waqf must not fail for want of a mutawalli. There is a statement to this effect by Ahmad b. Hanbal.[286]

A basic reason can be seen here for Nizam al-Mulk's choice of the madrasa rather than the masjid for his great network of institutions of learning. In this way, he was able to side-step any form of local control, whether by the inhabitants, or by the caliph or his representatives.

c. Rights and Responsibilities

As already mentioned, the post of mutawalli could be assumed by the founder himself. The mutawalli could also be the mudarris (professor of Koranic science) of a dar al qur'an; if the monastery was an shaikh (professor of hadith) of a dar al-hadith, or the shaikh (professor of Koranic science) of a *dar* al *qur'an*; if the monastery was an important one the shaikh was called shaikh as-shuyukh and could be the mutawalli of the foundation.

Qadi-Khan (d.592 / 1196) distinguished between the function of a mutawalli and those of a mushrif, when both posts were in the same foundation. The mushrif did not have the right of tasarruf, disposal over the waqf property, for that was a right delegated to the mutawalli; rather he had the function of hifz, maintenance, nothing else.[287] Anqarawi made the distinction between the function of the mutawalli and that of the qaiyim. The mutawalli, he wrote, was he to whom the right of tasarruf, disposal, was delegated; the qaiyim was he to whom was delegated hifz, maintenance, jam', collection of the revenues, and tafriq, distribution of the stipends to the beneficiaries of the waqf. The qaiyim was under the authority of the mutawalli and performed those functions which were just below those of the mutawalli.[288]

In another passage, Anqarawi distinguished between the functions of three posts: the nazir,[289] the jabi and the sairafi. The job of the nazir, he said, was to authorize (amr), prohibit (nahy), manage (tadbir), appoint (amr bi 'l-qu'ud), and receive the revenues (qabd al-mal). The job of the jabi (collector) was to collect all revenues (jam' al-mal) from the tenants (musta'jirun). The job of the sairafi (treasurer) was to examine the money (naqd al-mal) and weigh it (wazn al-mal).[290]

The more important the waqf, the larger was the number of staff, and the more specialized were the functions. Functions performed by a small number of administrators in a small waqf were distributed

among a greater number of them in a large one. In the process, questions came up as to what could or could not be done by a certain official, and distinctions were made by the jurisconsults whose opinions were solicited. Anqarawi makes it quite clear that the revenue agent (jabi) can neither rent out the building nor bring a complaint against the tenant, except by delegation from the nazir.[291] Qadi-Khan makes it clear that even if the founder had stipulated in the instrument of waqf that the qaiyim may buy a bier with the waqf's income, the qaiyim would be held liable should he do so.[292] This meant that though the founder could stipulate posts and their occupants, he could not alter their inherent functions.

The mutawalli had all the rights and duties pertaining to the administration of the waqf. The authors list these as follows: building and rebuilding (ʿimara), preservation of the waqf (hifz al-waqf), leasing the property (ijara, ijar), planting (ziraʿa), collecting the income of the waqf estates (tahsil ar-raiʿ), from its rents (min ta'jīrih), from its crops (min zarʿih), from its fruits (min thamarih), striving to increase its yield (al-ijtihād fī tanmiyatih), distributing the proceeds among the objects of the waqf (ṣarfuhū fī jihātih), repairing (islah), paying its beneficiaries (iʿṭā' al-mustaḥiqq), taking all precautions to preserve the properties and their proceeds (hifẓ al-uṣūl wa 'l-ghallāt ʿalā 'li 'ḥtiyāṭ), hiring (at-tauliya) and firing (al-ʿazl), and handling all disputes and litigations (al-mukhasama).[293] The other functionaries were his subordinates to whom he could delegate some of these duties. His primary duty was to see that the waqf was administered in accordance with the conditions set down in the deed. When the instrument of waqf did not specifically designate the mutawalli as having the right to hire and fire, there was some question about his right to do so. Some jurisconsults held that this right had to be stipulated by the founder in the waqf deed.[294]

The mutawalli's authority extended over the estate and its proceeds. If, however, the waqf instrument stipulated for him the right of disposal and for another authority or for one person building and for another collecting the revenue, then, according to al-Harithi, the stipulations were followed. Ibn Taimiya says that a financial agent, mustaufi, could be appointed to bring together the disparate workers. If a mustaufi is necessary in order to keep the books, then he must be hired; but he may be dispensed with when the workers are few in number. The imam's doing the bookkeeping personally is like appointing the imam as qadi. That is why the Prophet used to act as qadi himself in Medina, and appointed others elsewhere.[295]

On the question of who was to administer the waqf of a masjid, Ibn Taimiya answered that no one but the mutawalli in charge (an-nazir al-mutawalli) has the right to administer it. No one else could manage it without his permission; neither the mutawalli of another waqf, nor

even one who had previously been the mutawalli of the waqf in question, nor any other. Nor could anyone else disburse the revenue of the masjid's waqf to its bona fide beneficiaries.[296]

There were checks on the power of the mutawalli. Even when the founder stipulated that the mutawalli could administer the foundation as he saw fit, the actions and decisions of the mutawalli were subject to the religious law. His choice had to be one for the common good, not for the satisfaction of his own whims.[297]

The founder could stipulate in the instrument of waqf that the mutawalli may accept or reject a prospective beneficiary because of a qualification; but he could not stipulate that the mutawalli may accept or reject a candidate as he pleased. If the candidate was qualified he must be accepted by the mutawalli, up to the capacity of the institution.[298] Haitami (d.974/1567) said there was some question about whether the mutawalli's functions included the admission of students for residence (tanzīl ṭalaba li 'd-dars),[299] meaning other than the foundationers.

If the founder stipulated that the foundation could not be leased for more than one year, the mutawalli had nevertheless the right to lease it when such leasing was in the interests of the foundation.[300] The mutawalli could lease the produce of the waqf's land, when the beneficiaries were absent, fearing that it might spoil or otherwise be lost, but he had to lease it to someone completely trustworthy. He could also borrow with the permission of the qadi in order to repair the waqf.[301]

Subki, in his *Muʿīd an-niʿam*, wrote that the mutawalli had to keep the properties of the waqf in good repair and seek to increase its yield. He cited his fellow Shafiʿi jurisconsults to be of the opinion that the tutor of an orphan need not go to all lengths in seeking to increase the yield of properties in his trust, but should do so only to the extent needed to take care of the needs of the tutee without touching the properties themselves. Subki agreed with this opinion as a matter of principle, but added that it would not hurt to go beyond those needs; the more revenue the better.[302] Subki was trying to fight a situation, all too frequent, wherein the properties were not even developed to yield minimally, but actually fell into decay. At best, the situation was static; at worst, regressive.

There was agreement that a mutawalli could purchase a shop, a house, or make some other investment with the revenue of a masjid; but should he set out to sell this investment there was disagreement among the jurisconsults about whether he could do so. There were those who said 'no', the investment being part of the waqf; and others, 'yes', he could sell. Qadi-Khan agreed with this opinion because when the mutawalli made the investment he made no statement which could be construed to mean that he intended to set up additional

waqf;[303] what was bought with the income of the waqf did not qualify as waqf for the simple reason that it lacked the conditions of qualification as waqf.[304] Anqarawi, however, left the question unanswered, saying that answers have differed, there being disagreement among jurisconsults on this point.[305] This indicates, once again, a tendency to a static state in the Islamic waqf; buying and selling imply profits.

Waqf land could not be sold, nor could anything constituting a part of it. For instance, the mutawalli could not cut down fruit-bearing trees, nor could he sell them; but he could do so with trees that were not fruit-bearing.[306] Trees that were not fruit-bearing but still standing on waqf land could not be sold either; they had first to be cut down, then sold.[307]

When a mutawalli built on waqf land which he controlled, the building belonged to the waqf if built with waqf funds, but was his own if built with his own funds; however, he had to have witnesses testifying to this effect, failing which the building was that of the waqf.[308]

When the founder stipulated his right to increase the salary of a certain beneficiary in his waqf, or to decrease it, he could do so legally. But once having done this, he could no longer reverse his action, because his stipulation aimed at an action at his discretion, and once having decided upon and executed that action, the stipulation was fulfilled. But if he wished to do so repeatedly as long as he lived, he had to make his stipulation as follows:

> So-and-So has the right to increase the salary of whomever he chooses, and decrease that of whomever he chooses, and to decrease the salary of one whose salary he has increased, and to increase the salary of one whose salary he has decreased, to admit anyone he wishes into the ranks of the beneficiaries, or to exclude anyone of the beneficiaries, at his discretion either way, as long as he lives.

Then whatever the founder had done remained as he left it at his death and whoever was appointed as mutawalli of the waqf could not have these rights, unless they were so stipulated in the waqf instrument. The founder could also stipulate such prerogatives for the mutawalli who succeeded him without doing so for himself, and could still exercise such rights as long as he lived, if he so chose, because by stipulating them for another he made them available to himself. Then when he died, the mutawalli who succeeded him had the right to exercise these prerogatives. If the founder stipulated for himself the waqf's istibdal (changing the waqf property for another) without adding anything else to the stipulation, he could not do this or part of it for the mutawalli; it was his special privilege, because his stipulation was limited to himself in the waqf instrument, and he could not do other than what he stipulated. This fell under the heading of takhsis (particularization, limitation).[309]

When a mutawalli of a waqf died, the founder, if still living, appointed the new mutawalli. If the founder died leaving instructions regarding the successor, then the person so indicated was hired as mutawalli. In the absence of these conditions, the qadi, who was the general supervisor (nazir 'amm), hired the new mutawalli.[310]

It should be understood, however, that the founder could not make an appointment replacing the deceased mutawalli unless he had stipulated for himself the power to do so. In the absence of a stipulation, the qadi appointed the successor; such was a fortiori the case when the mutawalli died after the founder.[311]

When the founder stipulated the incumbent qadi as mutawalli, then, according to Shaikh Nasr Allah al-Hanbali (d.695/1296), if the qadis were numerous, control devolved upon the sovereign, who could then appoint a mutawalli of his choice. Several jurisconsults were also of this opinion.[312]

When the mutawalli was not named in the instrument of waqf, then his post devolved upon the person for whom the waqf was instituted. Most Hanbalis followed this rule, except Ibn Abi Musa (d.428/1037) and al-Harithi who say it devolved upon the qadi. The question could, however, depend upon whether the possession of the waqf devolved upon the person for whom the waqf was founded, or upon God. If the former, then the trusteeship is his; if God, that of the qadi. Again the question could depend upon whether the person (or persons) in whose favour the waqf was instituted was a designated person, a restricted group, or not. If unrestricted, for instance the poor and destitute, or if a masjid, a madrasa, a bridge, a ribat and the like, then all agreed that the trusteeship would go to the qadi. Shafi'i said, according to one of his opinions, that the trusteeship belonged to the founder. Hilal ar-Ra'y (d.245/859), of the Hanafis, concurred with the Shafi'is. This was the more prevalent of two opinions, according to al-Harithi. In this case, the founder could appoint a mutawalli who acted as a substitute, and could dismiss him at will. This was because of the inherent nature of his legal power (li-asalat walayatih). He could also designate the successor mutawalli in his will.[313]

The founder of a ribat who had stipulated himself as mutawalli during his lifetime, would nevertheless lose it if his conduct was sinful, such as indulging in drink, regardless of his stipulation in the instrument of waqf.[314]

Ibn Taimiya placed a limitation on the founder's power of appointment, holding that it was not legally permissible for a founder always to appoint as mutawalli adherents of one and the same school of law.[315] One must understand here, in the case of institutions of learning, any institution but those teaching law; for in the latter case, the professor of law had to belong to the school of law represented. This limitation held true also for the mutawalli who was not the professor

occupying the chair of law. What Ibn Taimiya appears to have had in mind were the institutions of learning which had grown in importance in his day in Damascus, the dar al-hadiths and the ribats. Here the object of the traditionalists (ahl al-hadith) was to create an institution which would help them to close ranks in order to achieve strength through unity against the forces of rationalism. The madrasas wherein each madhab had its own professors of law tended to be divisive, allowing for infiltration by the rationalist theological movements seeking legitimacy through the schools of law.[316]

d. Committee of Overseers

According to the Hanafi jurisconsult Qadi-Khan (d.592/1196), a waqf could be instituted in the care of a definite number of men who then appointed the mutawalli without prior consultation with the qadi; their appointment would be valid if the mutawalli was an honest, upright person. It would be more proper, however, that the qadi be asked to appoint a qaiyim. Some have said that in those times (sixth/twelfth century) it was better not to put the matter of such an appointment to the qadis, seeing that they were not above reproach. Nevertheless, the committee in charge of the masjid-waqf should not appoint either the qaiyim or the mutawalli without at least consulting the qadi.[317] The qadi, under these circumstances, would act in an advisory capacity; the committee in charge of the waqf could ignore his advice.[318]

It is clear that such a committee, acting in their capacity as overseers, preempted the overseeing function of the qadi. Though opinions were divided over whether the committee should consult the qadi, the consensus was that in the event of prior consultation, the qadi's opinion was merely advisory and could be ignored.

Such a committee of overseers existed in the case of the Shrine College of Abu Hanifa in Baghdad in the fifth/eleventh century. In this case, the chief qadi of Baghdad, a Hanafi, headed the committee of overseers. The *Diary* of Ibn al-Banna', in reporting the appointment of a new professor to replace its first-appointed professor of law Ilyas ad-Dailami (d.461/1069), deceased two weeks previously, mentioned the act of appointment by using a verb in the plural, '*they appointed* Abu Talib, the brother of the Marshall of the Nobility, in the place vacated by Ilyas [ad-Dailami] . . .'.[319] Further on in the *Diary*, the chief qadi is cited as making the appointment, he being at the head of the committee.[320] In the following century, Ibn al Jauzi,[321] in reporting the waqf revenues of this College, sealed by order of the Hanafi sultan, cited the members of the committee (wukala'), being called to account, and the chief qadi being arrested.[322]

The following case put to a jurisconsult for an opinion concerned two founders in two different towns, one who founded a madrasa and the other who founded property for that madrasa. Each waqf had

its mutawalli in the person of the qadi for each of the two towns. There was no question as to the following jurisdictions: the qadi of the town where the property was located was to collect and distribute its revenues among the beneficiaries of the madrasa; the other qadi was to perform his functions as mutawalli of that madrasa. A question arose, however, as to which of the two mutawallis was to appoint the professor of law, mudarris. The answer was that the mutawalli of the property was alone capable of hiring a salaried professor; that of the madrasa could hire an unsalaried one. The problem would remain substantially the same were the two mutawalli-qadis to exchange jurisdictions by moving into one another's town.[323]

The question whether two mutawallis of a waqf could split it in two, each controlling a half thereof, was answered by Ibn Taimiya in the negative: both must control the waqf as an indivisible entity.[324]

When two mutawallis of one waqf disagreed with regard to the choice of imam and appointed each his own candidate, thus creating an aberrant situation, the following rules applied: the imams had to be independent of one another, otherwise their appointments were vitiated; if they were independent and appointed at different times, the earlier one succeeded in getting the appointment; if appointed simultaneously, they drew lots and the winner was appointed.[325]

Solicited for a fatwa on a similar question, Ibn Nujaim (d.970/1568) answered that in a town in which two qadis appointed each a different mutawalli, both mutawallis so appointed would be legitimate, each mutawalli would administer independently of the other, and either qadi could dismiss the other qadi's appointee if he judged the dismissal to be in the interests of the waqf.[326]

When the mutawalliship (nazar) was assigned to two persons, one of the two could not administer the waqf alone without a stipulation to that effect in the waqf instrument. The same held true when the qadi or the mutawalli assigned control to two persons. But when control was assigned to each individually, then each had the power to act alone without the express consent of the other. This is according to al-Harithi. According to the author of *al-Mughnī*, Ibn Qudama (d.620/1223), when the person in whose favour a foundation was instituted was himself the mutawalli, he was the sole controller. But if a group be involved, the mutawalliship belonged to all of them together, each carrying out his share of the collective responsibility (kullu insānin fī ḥiṣṣatih). But al-Harithi said that even here control belonged to all, together, without each being independent to the extent of his share, because control was assigned to the group as a whole, without anyone being independent in his control.[327]

When one of two mutawallis stipulated by the founder was lacking for any reason whatsoever, the qadi had to appoint a second, because of the founder's stipulation of two persons sharing in the control. But

if each was independent of the other, the appointment of a second when lacking was not necessary.[328] Whenever there was a question of two persons sharing in the control of the waqf, it was because the founder wished to have the one be a check upon the other, to minimize the chances of mismanagement.

e. Dismissal

Once the founder had named a mutawalli in the waqf deed, or had appointed one, he could not dismiss him unless he had stipulated for himself the power of dismissal in the instrument of waqf.[329]

When the founder reserved for himself the post of mutawalli, then assigned it to another, there were two opinions regarding his power to dismiss him. According to the first opinion, the founder could dismiss him, unless he had so named the mutawalli that the validity of the foundation depended on the latter's appointment. Any of the following formulas would make his dismissal invalid: waqaftu kadhā bi-sharṭi an yanẓura fīhī Zaid; or, 'alā an yanẓura fīhī (Zaid); or, ja'altuhū nāẓiran fīh; or, ja'altu 'n-naẓara lah. In each case the position of nazir, or mutawalli, is specifically assigned to Zaid and the validity of the waqf itself made to depend on the appointment of Zaid.[330]

On the other hand, when the founder stipulated the appointment in such a way that the appointee was in fact his substitute or delegate, then the founder could dismiss him; but even here it is possible to conceive the founder's inability to do so. Any of the following formulas would make his dismissal valid: ja'altu naẓarī lah; or, fauwaḍtu ilaihī mā amlikuhū mina 'n-naẓar; or, asnadtuhū ilaih. In each case the appointment is cast in terms of a delegation of power, which then the founder could recuperate whenever he wished.

Such appears to have been the case with the madrasas founded by Nizam al-Mulk. That he could hire and fire at will shows that he reserved for himself the post of mutawalli, then turned it over by delegation, tafwid, to his appointee who was both the mutawalli by delegation as well as the professor of law. In the case of his appointee to the Nizamiya Madrasa of Isfahan, Abu Bakr al-Khujandi (d.483/1090), the text is explicit: Nizam al-Mulk made the appointment as mutawalli of all the waqf properties, and professor of law, by delegation: fauwaḍa ilaihī 'l-madrasa wa 'l-auqāf.[331]

According to the second opinion, the founder could not dismiss the mutawalli under any circumstances.[332] The historical facts bear out the prevalence of the former opinion.

There are two kinds of nazir, or mutawalli: (1) an-nazir bi 'l-asala, the nazir by inherent right; this was the case of the person for whom the foundation was instituted, or that of the qadi; and (2) an-nazir al-mashrut, the nazir by stipulation. The nazir by inherent right could appoint and dismiss through his own legal power, which was

inherent in his position. The nazir by stipulation could not, since he derived his tenure through stipulation, and appointing others was not part of the stipulation, let alone their dismissal.[333]

A mutawalli, approaching death, could entrust his post to another, since he was in the position of a legal guardian, wasi, and a legal guardian had the right to appoint another as his executor.[334] This, of course, would have been the case of a waqf instrument in which the mode of succession was not stipulated. Moreover, the qadi would not need to intervene in order to designate a new mutawalli, unless the incumbent died without entrusting his function to another.

6. The Qadi

a. Prerogatives as Overseer

The qadi had the function of overseer with regard to waqfs.[335] His functions included the supervision of these waqfs as regards the safeguarding of its constitutive elements, the increase of its revenues, their collection, and their appropriate expenditure. When a mutawalli was put in charge of the waqf's administration, the qadi had to respect his rights, but continued himself to exercise a right of supervision. If no provision was made for a mutawalli, then the qadi appointed one or himself took charge.[336] He gave the mutawalli permission to borrow to pay off debts of the waqf or to buy grain for planting the waqf lands.[337] When the mutawalli needed to reconstruct the waqf, but had no funds from the waqf's revenue, he could borrow the necessary funds if the founder had made a stipulation to this effect in the waqf instrument; if not, he brought the matter to the attention of the qadi who enabled him to do so. Payment of the debt was then made from the proceeds of the waqf's revenue.[338]

Only the qadi had the right to sell the original waqf and buy another one (istibdal) more productive for the purposes of the waqf, according to the Hanafi jurisconsult, Muhammad ash-Shaibani (d.189/805).[339] The qadi was also charged with supervision over the poor beneficiaries as well as over the deceased; this was the case when the matter to be attended to for the waqf was not specifically provided for by the founder in the waqf instrument.[340]

When the founder stipulated that the post of mutawalli be given to his progeny according to the principle of al-asaddiya (the most levelheaded, the most sound of character), or on the basis of isa, (testamentary appointment) by one of the qaiyims (administrators), and when these conditions were lacking, the post devolved upon the qadi; that is to say, when there was no longer an asadd (one of sound character) in the founder's line of descent, or when the qaiyim died without designating a mutawalli in his last will and testament.[341] No trusteeship devolved upon a beneficiary of the waqf without an express stipulation to this effect in the waqf instrument.[342]

When the qadi dismissed a mutawalli without cause (e.g. embezzle-

ment, breach of trust [khiyana] etc.), and appointed another in his place, his appointment was considered invalid. The qadi could dismiss the mutawalli without cause only if the latter was his appointee, not that of the founder.[343]

Haitami[344] cited a case wherein a professorship of law, dars, fell vacant in Mecca. The qadi of Mecca, in the absence of the mutawalli in Egypt or Syria, appointed a professor to fill the vacancy. Two jurisconsults, Siraj ad-Din al-Bulqini (d.805/1402) and his son, Jalal ad-Din (d.824/1421), said that the qadi had the right to make the appointment, that his appointment was irrevocable, and that appointments to such positions, when vacant, belonged to the qadi of the town in the absence of the mutawallis concerned.

Appointments to positions falling vacant during the absence of the mutawalli were made by the qadi. He also had supervisory control, and could instruct the mutawalli when the latter did anything inadmissible. The qadi could appoint a trusted person (amin) when the mutawalli was suspected of bad practices. When the mutawalli was known to have a dishonourable record (fasiq), or continued to act against the interests of the waqf, he was made to resign, or was dismissed, or a trusted person was appointed to work with him. When he was again worthy, he was returned to full trust. If he had embezzled, his pay was withheld to the extent of the embezzlement.[345]

The qadi's exercise of general supervisory powers (nazar 'amm) over the mutawalli made for some contention between the two. Ibn Taimiya cited a case where a mutawalli, duly appointed for a waqf, dismissed a mubashir, administrator, in the same waqf appointed by the qadi, who had acted in his capacity as general supervisor (nazir 'amm). The mubashir continued nevertheless to administer. The mutawalli then asked the qadi to dismiss him, but to no avail. The following questions were then put to Ibn Taimiya for a legal opinion: Can the qadi appoint without the consent of the legally appointed mutawalli? Can he decide the case between himself and the mutawalli to the exclusion of other qadis? If the qadi dealt unjustly with the mutawalli, what relief has the latter against him?

Ibn Taimiya answered that the qadi had no right to appoint or otherwise act with regard to the waqf without the express instructions of the legally appointed mutawalli. If the latter acted unlawfully, the qadi had the right to take over responsibility for the waqf. In the case of a disagreement between the mutawalli and the qadi, a third party had to act as arbitrator in accordance with the prescriptions of the law of God and His Apostle. Whoever acts unjustly toward another must be punished according to his injustice, as required by law.[346]

b. Finality of Qadi's Decision

When there was disagreement regarding the waqf on a matter not involving the qadi, the qadi's decision was final: li-anna qaḍā'a

'l-qāḍī fī 'l-mujtahad yarfaʿu 'l-khilāf (because the qadi's decision regarding legal points debated by jurisconsults [lit. regarding matters of ijtihad] puts an end to further controversy).[347]

7. Other Officials

a. The Mazalim Officer

Mawardi, in his *al-Aḥkām as-sulṭānīya,* cites the supervision of waqfs as one of the functions of the mazalim officer. This officer examined the waqfs in order to see that they were serving the objects for which they were created, and did so without waiting for a complaint to be made in their regard; he made sure that they were being administered in accordance with the stipulations of the instrument of waqf. He learned of the existence of a waqf in one or other of the following three sources: (1) the registers of the qadis charged with the safe-keeping of the waqf instruments; (2) the royal registers in so far as they contain dealings (muʿamala) concerning the waqfs or naming them in any way, and (3) old documents regarding them, the authenticity of which imposes itself on the mind, even when there have been no witnesses attesting to their authenticity, because of their not having been the subject of legal contention. All of this pertained to waqfs of a general character (wuquf ʿamma). He had other duties toward waqfs of a particular character (wuquf khassa).[348]

b. The Naqib

The naqib, registrar of the nobility, sharifs, descendants of the Prophet, had to supervise the waqfs destined for the sharifs by safeguarding the capital and developing the yield. When not in charge of collecting the revenues, he supervised those charged with their collection and those in charge of distributing them. He designated those entitled to the income when it was designated for a special group, and saw to it that the beneficiaries had the stipulated qualifications, so that no one entitled was excluded and no one who was not entitled, included.[349]

8. Endowment Income

a. General Remarks

The general rule regarding the proceeds of waqf properties was that they be disbursed as stipulated by the founder in the waqf instrument. However, according to Ibn Taimiya, this stipulation could be contravened for the public good, which could change with the changing of the times. Even in the case of an institution founded for jurisconsults and Sufis, the endowment revenue could be diverted from them to soldiers for a jihad (holy war), should the need arise.[350]

According to Ibn Nujaim, a person who established a legally constituted waqf could stipulate that his debts be paid from the income of the waqf properties.[351]

The qaiyim of a masjid-waqf the income of which was destined, among other things, to pay for the reconstruction of the masjid, could

spend the income on anything the omission of which would be detrimental to the mosque.[352] Thus he had the right to purchase a ladder to gain access to the roof of the mosque in order to clean it, or to resurface it; he could pay a journeyman to sweep the roof, shovel snow off the roof, remove dirt and trash gathered around the masjid.

b. Stipends of Beneficiaries

1) Nature of Stipends

The stipends paid to the beneficiaries of a waqf were assimilated partly to a wage, ujra, partly to a gift, sila, and partly to alms, sadaqa. The outcome of a legal opinion varied according to the preponderance given to one over the other two. For instance, in the case of a professor who had been paid a full year's salary in advance and died before the academic year was over, the question whether the balance of the salary for the remainder of the year was recoverable or not would depend on whether the salary was regarded as a gift, as alms, or as wages for services rendered. If regarded as wages, then the balance of the salary for what remained of the year was recoverable from the decedent's (deceased person) estate.[353]

On the other hand, Ibn Taimiya considered the stipends paid to beneficiaries of a waqf to be like rizq from the public treasury (bait al-mal), rather than like wages or a salary. What was received from a public treasury was not compensation (ʻiwad) or wages (ujra) for services rendered; rather it was sustenance provided by God (rizq) to help a person to obey the divine laws. So also was the property made waqf for good works and property left by testament, or for the object of a vow; these were not like wages (ujra) or a lump sum payment (juʻl). Such was the opinion of Abu Yaʻla, in his *Khilāf*, who declared that payment received for teaching law (tadris) and the like was not a wage, but God-given sustenance, a grant in aid of the acquisition of religious learning (bal huwa rizqun wa-iʻānatun ʻalā ṭalabi 'l-ʻilm).[354]

2) Terminology

There are several terms used in the documents referring to stipends: jamikiya, jiʻala or juʻl, jiraya, maʻlum, murattab or ratib, and ʻulufa. These terms, like some of those designating members of a foundation's staff, are not always used in the same sense by the different authors; they differ also according to region; and some are often used interchangeably. Generally speaking, jiraya refers to an allowance in kind; as, for instance, a daily allowance of food. The term juʻl or jiʻala, usually means a set amount of money or the equivalent paid out in a lump sum agreed upon beforehand;[355] and jamikiya usually means a professor's salary. The terms maʻlum, murattab, ratib, and ʻulufa usually refer to salary. In Ibn Hajar's (d.852/1449) *Durar* (eighth/fourteenth century), the term ratib is used in the sense of a life-term pension: ijʻalū maʻlūmahū rātiban; fa-lam yazal yatanāw-

aluhū ilā an māt ('make his salary a pension.' So he continued to receive it until he died).[356]

3) Classification of Beneficiaries

Because of the fluctuation in the income of waqf estates, questions arose about the method which should be followed in making payments to beneficiaries from the income received. This matter was of some importance to the beneficiaries, especially when the income was in a state of flux. Questions then arose as to the priority to be followed in making payments; which priority, in turn, depended on the categories of beneficiaries, especially when the founder had not made any stipulations in this regard.

The Shamiya College of Law (Intra-Muros) had its beneficiaries named in its deed as follows: (1) working-fellows (al-fuqaha' al-mushtaghilun); (2) *working*-scholars; (3) the professor of law; (4) maintenance of the physical plant; (5) the imam; (6) the muezzin; (7) the qaiyim.[357]

According to one source, the imam, the muezzin and the qaiyim belonged to one class of beneficiaries, while the professor of law, the repetitor and the law students belonged to another, thus dividing the beneficiaries into two classes. According to others, there was no distinction between beneficiaries; all were to be regarded as such without classification. Others, still, saw three classes of beneficiaries: (1) the professor of law; (2) the law students; and (3) the imam, each class receiving one-third of the proceeds;[358] any other beneficiaries were presumably considered to fall into the class of law students.

c. Liability of the Mutawalli

When the mutawalli spent funds from the income of the waqf on his own needs, then spent an equal amount of his own income on the needs of the waqf, he could do so and was not held liable.[359] But if he mixed his own money with the same kind of money as that of the waqf, he became liable for the whole amount; in other words, once his money was mixed with that of the waqf, so that they could not be distinguished, the whole was presumed to belong to the waqf and he was held responsible for the whole amount.[360]

A case is cited of a mutawalli who leased the waqf property for a year and upon receiving the amount in prepayment, paid it out to the waqf's beneficiaries. One of the beneficiaries then died before the year for which he was prepaid had elapsed. The question arose as to who was responsible for the amount unearned, the mutawalli who made the payment, or the decedent who received it.

The legal opinion given was that the mutawalli had no right to pay stipends except as already earned. If he paid in excess of what was earned, then he was liable for the unearned portion of what was paid. Haitami pointed out that some jurisconsults said that the mutawalli in such a case had no recourse to the decedent's estate, since the

decedent had no responsibility regarding the distribution of stipends. But the matter was debatable. The rule applying here was that there was recourse to the decedent's estate, because the decedent had received what he had not as yet earned. Responsibility thus lay with the recipient; the mutawalli was but a mediator in the matter.[361] Haitami evidently considered the stipend of a professor to be like a salary, not a gift, alms, or sustenance.[362]

d. Rights of the Beneficiaries

All beneficiaries of the waqf should receive their due in full, and should not have their allotments decreased in order to have the remainder spent on another waqf. There was no difference of opinion on this matter. The beneficiaries could have no objection against the mutawalli appointed by the founder, if the mutawalli was trustworthy (amin). They did have the right to know what they were called upon to do as beneficiaries of the waqf, and to be as informed as the mutawalli regarding the waqf terms. To this end, they could demand that the waqf instrument be copied so that they could have it in their possession as a record of their rights and responsibilities.[363] Ibn Taimiya stated that the registration of the instrument of waqf was the same as that of any other document whose records must be kept.[364]

The beneficiaries could share in the usufruct of the waqf, not in its substance. Ibn Nujaim stated this principle clearly: 'the waqf cannot be divided among its beneficiaries because their share does not reside in the corpus' (lā yuqsamu 'l-waqfu baina mustaḥiqqīh, li-anna ḥiṣṣatahum laisat fī 'l-'ain).[365] Beneficiaries were entitled to share in the usufruct of the waqf only when they performed their responsibilities as set forth in the waqf instrument. The stipulations must, however, be specific; otherwise the beneficiary was given the benefit of the doubt. For instance, a student absenting himself from the college for a few days was considered not to have been delinquent, because the waqf did not specifically call for his presence every school day.[366]

The beneficiaries could demand that the mutawalli repair the waqf so that the damage would not spread and lead to its complete destruction, thereby thwarting the purpose of the founder. He had to reconstruct the waqf even if reconstruction was not stipulated by the founder. If he failed to do so when he was financially capable of it, he was dismissed from his post. Furthermore, the beneficiaries had the right to demand to see his accounts when the beneficiaries were mentioned specifically by name in the waqf instrument, according to Nawawi and other jurisconsults. Also, Nawawi (d.676/1277), Ibn Suraij and others said that should the mutawalli claim to have paid the beneficiaries named in the instrument their shares of the waqf revenue, but they denied this, it was their word, not his, that was followed.[367]

Adequate compensation must be paid to the beneficiary of a waqf,

even if, in order to obtain it, he had to go against a stipulation of the founder. A case in point was brought before Ibn Taimiya for a legal opinion. The founder of a madrasa had stipulated that the beneficiary of his waqf could not be the beneficiary of another. A definite stipend was stipulated. The waqf instrument read in part: 'and when there occurs in the income [raiʿ] of the madrasa's waqf a decrease [naqs] on account of drought or for some other reason, what remains of the income is to be distributed among the madrasa's personnel, each receiving a share of it in proportion to his allotment. He further stipulated: 'and if prices go up, the mutawalli shall raise their salaries according to what would be adequate at the time'. The question arose whether it was lawful for the beneficiaries to combine their posts with other posts elsewhere so as to obtain an adequate income if the income of the waqf should diminish so that stipends fell below what was adequate. In his opinion, Ibn Taimiya answered in the affirmative.[368]

In the light of this legal opinion, it would appear that the desire for multiple posts sought by professors may well have been prompted, in part, by the fact that these posts were based on endowments whose incomes were uncertain, owing to the fluctuation of yields from crops in cultivated lands belonging to the foundation. Cultivated lands were systematically left to lie fallow one-half of the year.[369]

In a similar case the stipulation of the founder was that no one was to reside in the madrasa except those who did not have a post (wazifa) elsewhere, whether with an allowance (jamikiya) or with a salary (murattab). The founder stipulated for every student (talib) a definite allowance.

The question here was whether a student could lawfully accept an allowance from another source, should the income of the waqf diminish; whether the mutawalli could nullify the stipulation which prohibited the acceptance of such an allowance; whether the stipulation of the founder becomes invalid, even if the qadi decided that the waqf was valid. Again here, Ibn Taimiya answered that the student could seek additional subsistence from another foundation.[370]

There was ample reason for founders to stipulate in the waqf instrument that their beneficiaries were not to benefit from other waqfs; for many professors did indeed hold many posts, receiving as many salaries; and there is no doubt that the 'professional' student was already in existence and knew how to make the best of the situation. The same Ibn Taimiya who rose to the defence of the conscientious professor and student who were not receiving adequate incomes, rose against those among them who were accumulating as many stipends as they could. Among those who had taken money under false pretences, he said, there were some who had salaries many times more than their need and others who had posts with large salaries which they pocketed and paid out very little for the substitutes they em-

ployed (wa-yastanībūna bi-yasīr). For this reason, Ibn Taimiya declared that the substitute should be of the same rank as the person soliciting his services, who would then presumably not be satisfied with a mere fraction of the principal's salary, enabling the latter to enrich himself at the expense of the substitute.[371]

The validity of a waqf was, among other things, contingent upon the founder's valid ownership of the property to be made waqf. An eleventh-century case involved a person who put up a village as waqf in favour of the village ulama who then proceeded to receive the revenue of the waqf. They were not specified in the waqf instrument by name, each qualifying as a learned man ('alim) of the village. The property instituted as waqf was later discovered to be owned by someone other than the founder (fa-kharajat mustaḥaqqa). The question put to the celebrated Shafi'i jurisconsult al-Ghazzali (Algazel, as he was known to the Christian West) was 'who is responsible for the damages to be paid?'

Ghazzali's legal opinion was that the responsibility fell upon the shoulders of the founder because of his deception (li-taghrīrih). If the founder was incapable of making restitution, then the responsibility fell upon all those ulama and others who resided in the place or otherwise benefited from it. If the mutawalli leased the property to a third person, then distributed the proceeds of the lease to the ulama, the rightful owner of the property (mustahiqq al-milk) would then have recourse to the lessee, not to the mutawalli and the ulama, and the lessee would have recourse to those who received the proceeds of the lease. For he still owned the property even if the lease was invalid. The money coming from the lease had to be paid by those who received it.[372] Under such circumstances it behooved the beneficiaries to be certain of the validity of a waqf before accepting to be its beneficiaries.

The delinquent beneficiary, one who did not perform the duties required of him, and did not mend his ways, could be dismissed by the mutawalli in charge (man lahū 'l-walāya) and replaced by someone more deserving.[373]

Ibn al-Jauzi censured[374] jurisconsults who remained in madrasas for years without working to further their knowledge, being content with what they knew. He censured the jurisconsults who had finished their legal studies but stayed though no longer bona fide beneficiaries, since they were neither repetitors, nor professors of law.

Ibn al-Jauzi classified this idle type of jurisconsult under two categories: (1) those who had a vitiated creed (fasid al-'aqida) in religion, but studied fiqh to cover their true colours (li-yastura nafsah), or to be supported by the waqf, or to achieve leadership (riyasa) by engaging in disputation; and (2) those whose beliefs were sound, but whose concentration on disputation led them to bad manners and to the excesses of pride.

The question arose whether non-foundationers could be admitted into the foundation to reside in its rooms, to take part in its assemblies, to partake of its food and water, and the like. The legal opinion given declared that such admission would be permissible according to custom, that custom in these matters played a role equivalent to the explicit stipulations of the founder.[375] According to Ghazzali, it would be permissible to admit a non-Sufi into a ribat to share the food once or twice, on the basis that such was the custom of the Sufis, and the founder of the ribat could not be presumed to have founded a ribat for them without accepting their customs.[376]

The right of residence belonged to the foundationers. According to Taqi ad-Din as-Subki, in a madrasa, a ribat, a dar al-hadith, and a dar al-qur'an, this category included the teaching staff and students and the other members of the staff, such as the qaiyim and the muezzin.[377] According to Nawawi, a graduate law student who did not have the right of residence, manzil, could nevertheless occupy one of the rooms in a madrasa by the mutawalli's leave, unless the founder had stipulated to the contrary.[378] This is perhaps why the 'commoners' and 'pensioners' of Oxford and Cambridge colleges were unknown in Islam; the extra income could not lawfully be collected by the mutawalli. There were no fees to pay in a charitable trust. The proceeds could not be added to the waqf, nor assimilated to surplus. Oxford and Cambridge colleges could do so as corporations, and not merely charitable trusts; the trustees could enact new statutes for the purpose.

A later legal opinion given by Ibn Taimiya further clarifies this question of foundationers and their right of residence. A madrasa was instituted waqf for students of law, at their various levels, for residence (bi-rasmi suknāhum) and working on their studies (ishtighal). Two questions were addressed to Ibn Taimiya: first, was residence in this madrasa the exclusive prerogative of the beneficiaries entitled to a share of the waqf's income (al-murtaziqun)?; and second, could a resident student be expelled in spite of his belonging to a group in whose favour the waqf was instituted?

Ibn Taimiya's answer was that residence and subsistence (irtizaq) need not necessarily belong to one person. Residence was lawful without receiving a share of the waqf's income (min ghairi 'rtizāqin mina 'l-māl); just as it was possible to receive such stipends without having the right of residence. Nor was it lawful to expel a member of any of the two groups mentioned (graduate and undergraduate students of law) without legal cause, so long as the resident was working at his studies (idhā kāna 's-sākinu mushtaghilan), whether he attended lectures on law or not (sawā'an kāna yahḍuru 'd-darsa am lā).[379]

A question of priority to the right of residence arose in the following case. A ribat fell into ruin; when reconstructed, its original residents

claimed priority to the right of residence. Qadi-Khan declared in a legal opinion that if the ribat was completely destroyed and had to be built anew, the original residents would have no priority; they would have priority only if the ribat had been partially destroyed and reconstructed.[380]

Ibn Taimiya was asked for a legal opinion on whether a woman could lawfully occupy a room in a Sufi zawiya where there were ten resident (male) mendicant Sufis, fuqara'. The founder had not stipulated for her a place of residence, nor was she one of the founder's relatives. Ibn Taimiya said that if the founder had stipulated that only men should reside in the zawiya, whether bachelors or married, then she had to be refused residence. The residence of a woman among men, and of men among women, was prohibited as against the law of God.[381] It would seem that – Ibn Taimiya's opinion regarding co-educational residence notwithstanding – such residence did occur where the founder had so stipulated, perhaps in the case of married graduate students or married professors and other members of the staff.

The following case points out the need for a place of residence for beneficiaries of a masjid because the latter could not normally be used for residence. Ibn Taimiya was asked whether it was lawful to build outside of the masjid a place of residence (maskan) to be occupied by the staff of the masjid who were charged with its care (ahl al-masjid, al-ladhīna yaqūmūna bi-maṣāliḥih), such residence to be financed from the waqf income. The answer was affirmative.[382]

Thus it appears that masjids, which were still being used as institutions of learning alongside the other types of colleges, were being brought up to date by providing the staff with lodging. The only thing they now lacked was scholarships for the students. In the case of the masjid, those entitled to its income (ahl al-istiḥqāq li-rai'i 'l-waqf) were the staff of the masjid (. . . al-qā'imīna bi-maṣlaḥatih), not the students. It is possible that an effort was being made here to enable the masjids to compete more successfully with the madrasas for staff. It is also possible that the masjids were attended by students of well-to-do parents, by the out-of-towners capable of paying for lodging in the adjacent khan provided for the purpose, or in rented houses, by the towners who lived at home, and by privately supported students. Compare, for instance, the case of Taj ad-Din as-Subki who said that his father was not in the habit of sending his sons to madrasas, but taught them their basic studies himself. They presumably studied in the masjid under their father's direction.[383]

e. Methods of Disbursement

Many fatwas dealt with matters of disbursement when the yield of rents and crops fell short of meeting the financial needs of the foundation. The frequency of such fatwas points to the chronic financial

difficulties experienced, further aggravated by the fact that the surplus incomes of the productive years could not be retained for payments during the years of leaner yields.

It often happened that the stipulations of the founder in the waqf instrument could not be followed for lack of sufficient funds, because of failure of the harvest from cultivated waqf land. In such a case, a priority was established and the most essential was first provided for, then the next most essential, and so on.[384] The first beneficiary in priority was usually the foundation itself, the construction or repair of the building, whether or not the founder had so stipulated in the waqf instrument. Second came what was most essential to the foundation and of the most pervasive interest to it; as, for instance, the appointment of an imam for a masjid and of a mudarris for a madrasa; these were hired and paid a sum adequate to their needs. Third came the lamps, carpets and so on, to the last of the necessities of the foundation.[385]

There were several concepts involved in methods of disbursement. The term jamʿ (association, combination) meant that all beneficiaries shared in the usufruct on an equal basis. Opposed were various systems of priority. The term auwalan fa-auwalan (first, then first) referred to priority by seniority. Tartib (sequence, succession) referred to a system whereby beneficiaries were ranked, the higher in rank being paid to the exclusion of the lower. It differed from the system termed taqdim wa-ta'khir (pre-positioning and post-positioning), in that the beneficiary post-positioned could in principle still be paid from what remained, whereas with tartib, he was excluded. In the system termed tafadul, or, as in Mardawi's *Inṣāf*, tafdil (differential treatment), the beneficiaries were paid on a varying basis, some receiving more than others.[386]

The following legal opinion dealt with disbursements to stipendiaries from endowment income according to seniority. Beneficiaries were assigned stipends and allowances in kind according to the founder's stipulations. He had also stipulated that no compensation was to be made from proceeds that failed to come in (wa-sharaṭa 'l-wāqifu anna mā yankasiru lā yuqḍā). Some salaries and allowances one year were in arrears because of failure to collect rents from buildings. At that time there were proceeds coming from crops from waqf lands. When these proceeds became available, the mutawalli wanted to hold them back in order to pay future salaries and allowances; but the beneficiaries wanted to collect the stipends due them. Was it lawful for the mutawalli to make disbursements from the proceeds of one year for the following year, before having completed payment for the year in question?

The opinion of the jurisconsult was that payment should be made to those who worked in the year in which the proceeds from the crops

became available; and that it was not lawful for him to spend any of it for the following year, except from what remained after making this payment. Concurring in this opinion were the Hanbali jurisconsult Zain ad-Din b. al-Munajja (d.695/1296) and the Hanafi jurisconsult al-Hasiri (d.698/1299).[387]

If a person instituted his house as waqf for a masjid and for its imam, half the income was the imam's and the other half that of the masjid, as though the waqf were instituted for two individuals. If the founder instituted a waqf for all of the masjids of the town, and for an imam to lead the prayers in one of the masjids, the proceeds would be divided in two, between the imam and all the masjids. This was the opinion of Ibn as-Sairafi (d.844/1440), author of *Nawādir al-madhhab*, with Harithi concurring; but Mardawi said the imam should probably receive the share of only one of the masjids.[388]

There were times when the income of foundations was confiscated by the sovereign or other men of power. In one case, the founder had built a college of law and endowed it for students and staff. The sultan confiscated most of the endowment income. The founder had stipulated that the income be shared according to allotments assigned to each class of beneficiaries. The question was, can the mutawalli pay the staff in full and give the remainder to the students of law? The opinion of Ibn Taimiya was that the staff had priority over the students in receiving their pay; but that everything should be done to conserve the income so that it could be made adequate for all concerned. This could be achieved by a system of retrenchment, giving one staff member four jobs, for instance, in lieu of one, if possible, rather than continuing to hire four persons, one for each job.[389]

The question was asked whether all the proceeds of the endowment income of the professorship of law were to be paid at the beginning of the year, or only for the teaching already done? For instance, when the mutawalli leases waqf property for an extended period, does he disburse the proceeds among its beneficiaries in one lump sum, or at different intervals, at the end of given periods?

Haitami answered that disbursement was to be made in accordance with the founder's stipulations. If the manner of disbursement had not been stipulated, or if it was unknown because the deed was lost, then it was to be made in the manner in which the earlier professors were paid, if this could be ascertained without doubt. If not, then according to the custom prevalent during the founder's lifetime, this practice being as valid as the stipulation of the deed itself, according to 'Izz ad-Din b. 'Abd as-Salam (d.660/1262). If, again, this practice was unknown, the considered judgment (ijtihad) of the mutawalli was to be followed. Haitami went on to make a distinction between endowment income from leases (ujrat al-ijara) and from crops (ghalla).[390]

According to Ibn Taimiya, the mutawalli and, after him, the qadi, had the right to determine the amounts of the stipends for the professor of law, and the law students, fuqaha', in a madrasa. Should the income of the waqf increase, the increment would be distributed among them. He declared that the principle of giving priority to the professor of law, or to someone else, was invalid; and that he knew of no reliable jurisconsult who adhered to such a principle, or anything like it, even though it had been enforced by qadis.[391] It lacked in validity because it was neither stipulated in the waqf instrument, nor sanctioned by custom ('urf). Nor was the salary of the professor a fixed one necessarily, for he was one of the beneficiaries and his salary increased or decreased according to the vagaries of the waqf income.[392] There was disagreement, however, among the jurisconsults on this matter. A good many of them, Ibn Taimiya included, agreed that if the harvest of one year failed, the stipends of the beneficiaries for that year and the next were to be calculated from the proceeds of the second year. The reason for this was that work would go on as usual rather than suffer from a year's interruption. Some jurisconsults would complete the stipends from the proceeds of several years later; but more than one jurisconsult rejected such an opinion.[393]

Because of the perennial problem of fluctuating waqf income, a system of priority was developed according to which the foundationers were divided into two main categories: (1) those without whom the object of the waqf would be vitiated, called arbab ash-Sha'a'ir; and (2) arbab al-waza'if, encompassing all others, including students and holders of lesser posts. For instance, in a jami', the arbab ash-sha'a'ir were the imam, the khatib and the muezzin; in a masjid, the imam and the muezzin; in a madrasa, the mudarris.[394] The term wazifa (pl. waza'if), has to this day a meaning relating it to students and workers; a school assignment, homework; a daily ration, a post, a job. The term designated those whose absence from the waqf was of less vital concern than the first category. Anqarawi refers to the student's position in a waqf as wazifa.[395]

The following case illustrates the essential relationship of the mudarris to the madrasa, since he belonged to the category of arbab ash-sha'a'ir. The madrasa was endowed for two schools of law, the Hanafi and the Shafi'i. It therefore had two professors of law, one for each madhab. The other beneficiaries were: three mutawallis, three nazirs, a katib (secretary or keeper of the books), a mushrif, three jabis (collector of rents, pl. jubat), a na'ib-mutawalli, a bauwab (doorman), and a muezzin.

The waqf income fell short of the amount needed to make the stipulated disbursements. One of the two professors was not working. The question was how to make the disbursements: was the working professor to be paid fully, after the building was provided for, even if

the entire amount available was disbursed, leaving out the other professor and the rest of the beneficiaries? The answer was that an attempt be made to pay the working professor less than his stipulated salary. If he was not satisfied, another should be appointed in his place who was of equal competence and who would accept the lesser salary. Failing this, the incumbent should be paid the full amount of his salary; for otherwise, the college would lose its legal status because its object would be vitiated. In any event, no one was to be paid who had not done the work for his post as stipulated in the waqf deed.[396]

The following fatwa, to all appearances, dealt with a case arising in the same college as the case just cited; though the case itself was not the same. The professor who was not yet fulfilling his professorial functions was discussed in more detail.

Many deeds of foundations stipulated that the professorship of law in a college be given to a designated jurisconsult, and, after him, to the male line of his posterity. In the present case, the successor to his father's chair of law was still a minor attending the maktab, elementary school. The madrasa in question was founded for two schools of law, the Hanafi and the Shafiʿi. The Hanafi professor was teaching Hanafi law, but the Shafiʿi law course was not being taught, its designated professor being still a minor. According to the deed of foundation as known to the mutawallis of the foundation, past and present (sābiqan wa-lāḥiqan), the holders of the two chairs were to be paid equivalent salaries (ʿulufa). The question was, should both chair holders receive their salaries, or should the professor of Hanafi law alone receive it, to the exclusion of the minor, who was not qualified (ahliya) and could not yet personally fulfil his functions (mubashara)? Furthermore, if the amount of the Hanafi professor's stipulated salary was inadequate, could the stipulation be violated in order to make it sufficient for his needs? And finally, what was meant by 'sufficient'?

In answer to these questions, the following opinion was given. The unqualified minor, still in the maktab, should not be paid a salary, even if the deed stipulated equivalent salaries for holders of the two chairs. This stipulation presupposed, in both cases, qualification for lecturing on law (ilqa' ad-duruṣ), and assiduous attendance (mulazama) at the college to teach and carry out all stipulations. The jurisconsult Ibn Nujaim, in his work *al-Ashbah*, censured a great many jurisconsults of his day for commenting favourably on the legal permissibility of collecting salaries (maʿlum) without the recipients' personal fulfilment of their functions, or in violation of the founder's stipulations. If the salary of the professor is known not to meet his needs, and the college is in danger of having its doors closed because he might discontinue his law course (dars) by failing to appear for it, and the income of the endowment is ample, then it is legally permiss-

ible to increase his salary to the point where it becomes sufficient for his needs, this being achieved by avoiding the extremes of extravagance and parsimony.[397]

Subki deals with the case of a madrasa in Faiyum which was made waqf for the Shafiʿi school of law.[398] Its waqf consisted of land the proceeds of which were spent on the needs of the madrasa and on its stipendiaries. The land was leased each year for an established share of the proceeds (bi-ghalla).

A faqih took up residence in the madrasa in the beginning of the year 704 H., and continued in residence to the end of that year. The person who leased the land paid the rent from the proceeds of the year 703 H. The question asked of Subki was whether the jurisconsult in question, who was in residence during the year of 704 H., had a right to any part of this income from the year 703 H.

Subki's legal opinion was that when the stipends of the jurisconsults for the year 703 are completely paid, the remainder may then be paid for the year 704 both to the jurisconsults and to the new resident of 704. If the original stipendiaries had been only partially paid for 703, they must then be paid first in full; if anything is left over from the proceeds, it is disbursed for the year 704 to them and to the new resident of that year; otherwise, the latter has nothing due to him until the proceeds for the succeeding year are collected. This question was a recurring one, and few understood it. The reason for this misunderstanding was that people seemed to confuse the object of the waqf (al-masrif) with the expense defrayed (al-masruf). But once the distinction was made, the ambiguity was removed. To remove the ambiguity Subki distinguished between three things: (1) the beneficiary jurisconsult (al-faqih al-mustahiqq); (2) the proceeds of the endowed property (al-mughall) paid by the one leasing the land and representing the rent for a definite period, a year, a month, or the like; and (3) the period for which payment is made (al-mudda al-maṣrūf ʿanhā). He continued as follows: the jurisconsult – that is, the first category – is a beneficiary entitled to be paid from the proceeds of the endowed property – that is, the second category – for the period during which he has worked – that is, the third category. There need be no correspondence (mutabaqa) between the period of the proceeds and the period during which the jurisconsult has actually worked (mubashara); but they may well correspond. Moreover, it may so happen that the proceeds of the period of work be delayed; for instance, some of the proceeds come in, but there is no need to disburse, either because of a lack of beneficiaries entitled to them, or because of limiting disbursements to what was stipulated by the founder. Under these circumstances, if a jurisconsult should acquire resident status and work for a period, he may be paid for that period from the proceeds in hand (min dhālika 'l-ḥāṣil). Subki did not say

that the first, or original beneficiaries, are entitled to it (inna 'l-auwalīna 'staḥaqqūh), but rather that only he is entitled among them to whom the mutawalli makes a disbursement, and it is through this payment that the beneficiary is designated specifically (bi 'ṣ-ṣarfi yataʿaiyan).

If the period of work (muddat al-mubashara) comes first (taqaddamat), as for instance someone who works for a period, then stops working, and the proceeds of the waqf come in from a period postdating his work, he is not entitled to be paid from it; the reason being that he no longer is a beneficiary jurisconsult of this madrasa for the period of the proceeds; but he would be entitled to payment for the period he worked if the proceeds are those of a year part of which he worked.

The founder, by instituting the land as waqf, made its rent due annually to the designated beneficiaries. It is a known fact that the land, from which no benefit can result except through cultivation, lies fallow half of the year. The foundation itself may date from a period during which the land is lying fallow, or may date from the season in which the land is occupied by green crops; the beneficiaries may be given resident status in the madrasa from the moment of its future usufruct (manfaʿat-ha 'l-mustqabala). Their working during that period would therefore be opportunistic (ʿalā ṭamaʿ), and it would not go unpaid (fa-lā yadhhabu majjānan). If their work is done at the time of the crops and the coming in of the produce (that is, at harvest time), their pay will be for the period worked, as well as for that future period when the land will be lying fallow (wa-ʿani 'l-muddati 'l-mustaqbalati 'l-muʿaṭṭala), provided the founder has stipulated in the waqf instrument that they be paid.

The upshot of all this was that the proceeds of a given year were not necessarily used to pay the beneficiaries for that year, but rather to pay those among them who worked during that year or after it. If they have stipends fixed by the founder for each period, the mutawalli will pay them in full for those periods on the basis of seniority (auwalan fa-auwalan), not paying the recent beneficiary until he has paid the senior one before him.

It is evident from this that students were admitted at different times during the year. There was no fixed period for beginning one's studentship during the year. New beneficiaries seem to have been admitted at all times.

The seniority rule applies also if the stipends, not specifically stipulated in the waqf deed, were fixed by the mutawalli and the harvest is in for the year 703. On the other hand, if the mutawalli has not fixed the stipends, and work has been done for a period of two years, the proceeds are used to pay for both years. The beneficiary who has a claim on the first and second years, is paid for both; he who

has worked for the first year is paid from the proceeds of that year alone; and he who has worked during the second year is paid from its proceeds alone.

The fatwa then reads as follows:

> Praise be to God! If the rent for the year 703 has been paid, the proceeds are used for the year 704; but if its rent is not paid, and if the stipends are fixed by the stipulation of the founder or at the discretion of the trustee [bi-ra'yi 'n-nazir], the year 703 is paid for only to those who worked in the madrasa during that year, and the remainder is paid to those who worked there in the year 704. This concerns the law students and other beneficiaries according to the stipends fixed for them. But if they have no fixed stipends, the proceeds are used to pay for both years in equal amounts, half of these proceeds going to those who were present in the year 703, the other half to those present in the year 704; and no one who was absent one of the two years will be paid from the share of the other year.

It was not a binding rule that the proceeds of one year should be used to pay the stipends for that year alone, but rather for that year's stipends and for the succeeding year. It was not used for the year preceding it, unless the beneficiary involved was one and the same person (illā idhā 'ttaḥada 'l-mustaḥiqq). This was also the rule applying to the period of a month.

The text of Subki's opinion is followed by that of another concurring opinion, the practice being that a concurring opinion may be written on the same page. This text, unsigned, agrees with that of Subki, and puts the case succinctly.[399]

Subki was of the opinion that if the founder had not stipulated the amounts of the stipends to be paid to the beneficiaries, the mutawalli should keep the amounts unspecified, because the income of the endowment fluctuated. This would allow him always to meet his obligations by dividing the income either equally (according to the various classes of beneficiaries), or according to a scale predetermined in the deed of foundation, or by himself.[400] When the founder stipulated the amount of the mutawalli's salary, he was required to supply that amount regardless of the endowment's income. On the other hand, the salary of his successor came from the income and was therefore subject to the fluctuation of that income.[401]

Mawardi, in his *al-Ḥāwī*, a commentary on al-Muzani's *Mukhtaṣar*, says that when the beneficiaries are in disagreement regarding the stipulations of the deed of foundation, contesting each other's rights regarding priority of payment (tartib),[402] and differential payment (tafadul),[403] no one having clear proof of his ranking, they all participate in the remuneration together without priority or differential ranking. If some should ask others to take an oath, it should be

imposed upon all. If the founder is still living, his statement is accepted as binding and he does not have to swear an oath. If deceased, but survived by his heir, his heir's statement regarding his wishes is accepted as binding. In the absence of a founder or heir, the mutawalli's statement is not binding, regarding the stipulations if he was appointed by the qadi; but, if by the founder, it is binding when the beneficiaries are in disagreement regarding them. If the difference of opinion occurs between the heir and the legal guardian (wali), the stipulations are referred to one or the other: (1) to the heir, because he takes the place of the founder, and (2) to the legal guardian, because he has jurisdiction regarding general supervision. If the founder has assigned a salary to the legal guardian, and a salary is normally paid for the post, it is valid; and he is also entitled to what was designated for him from the crops.

In the case of a waqf established for the construction of a masjid, Mawardi stated that it was legally permissible to pay its qaiyims from the waqf income, because they were appointed for the maintenance of its buildings; but it was not legally permissible to pay its imams and muezzins, because they were responsible for matters concerning the worshippers. As to whether it was legally permissible to defray the cost of oil for the mosque's lamps from that income, there were two views regarding the matter: the first was affirmative, because lamps were considered as part of the building; and the second, negative, because lamps were more properly involved with matters concerning the worshippers. On the other hand, it was legally permissible to pay for its rugs and mats from this source, because they were needed in the mosque and were connected with its building.[404]

Anqarawi was of the opinion that no stipendiary of a college could lawfully be paid from the income of the college's endowment unless his residence in the college exceeded that spent in his home, and most of his writing (naql) was in the college. This applied to the professors. As for the students, they could not lawfully collect their stipends if they studied one lesson each day, but resided in their homes.[405]

A question arose about the validity of retroactive payments to beneficiaries of an endowment. A Damascene college law student, in good standing, was forcefully taken to Cairo and imprisoned for a period. When released, he returned to Damascus. There was no apparent reason for his imprisonment. Was he entitled to his stipend for the period of his forced absence during imprisonment? Was the mutawalli under obligation to disburse it? Was the governor under legal obligation to assist him in the matter?

The opinions of the jurisconsults were affirmative.[406]

f. Other Dispositions of Income

1) Surplus Income

One of the more debated problems connected with the income of waqf

properties was the disbursement of surplus income. The general rule was that the stipulations of the founder in the waqf instrument were the sole guide to the manner of its disposal. But it was generally agreed that it could not be ploughed back into the original endowment, thereby increasing it.

Only the mutawalli of a waqf had the right to dispose of its proceeds; no one else could do so without his permission. The proceeds had to be disbursed as stipulated in the waqf instrument. There was no difference of opinion on this matter. But there was a difference of opinion among the doctors of the law as to the lawfulness of spending the remainder after all due allotments and repairs were provided for, and those who allowed the spending of the remainder allowed no one to do so but the lawfully appointed mutawalli alone. Those who disbursed the income to others than those lawfully entitled to it, while depriving the lawful beneficiaries, were to be censured.[407]

Land was made waqf for the reconstruction of a masjid, as needed, with the proviso that what was left over from the cost of reconstruction was to go to the poor. The income of the land accumulated and the masjid was not in need of reconstruction. According to one jurisconsult, this surplus was to be held for a future need to reconstruct the masjid, on the assumption that it could fall into disrepair at a time when the waqf land might be in an unproductive state. Another jurisconsult concurred, but added that if revenue accumulated enough to provide for the needs of both the masjid and the land, and still left a surplus, the surplus should be disbursed among the poor as the founder of the waqf had stipulated.[408]

The imam of a masjid could dispose of the surplus, using it to perform the pilgrimage to Mecca, provided he had the permission of the mutawalli, and there was no stipulation in the waqf instrument against it.[409]

In cases of emergency, the revenue of waqfs destined for the poor or for mosques, when it accumulated beyond the needs of the beneficiaries, could be used to pay tribute to infidel conquerors, in order to appease them; such funds were regarded as a loan to be repaid. The qadi could so use the surplus.[410]

When a waqf's income exceeded the expenditures necessary to provide for all concerned, the surplus was expended on another trust of the same nature; as for instance, a masjid's surplus income when expended for the benefit of another masjid.[411] In all cases, it was not lawful to dispose of the surplus of a waqf in any way which contravened the expressed lawful wishes of the founder.[412]

2) Stipend of Vacant Professorial Chair

When a professorial chair of law (tadris, pl. tadaris) became vacant and remained so for some time, the question arose regarding the proceeds of the endowment marked for that post. Did it accrue for the

eventual successor to the chair? If not, how was it disbursed? A yamani jurisconsult gave his opinion saying that the surplus went to the successor (ilā man taṣaddā ba'du). He based his opinion on the precedent that the endowment income of a masjid in ruin is used to build another one. But other jurisconsults were of the opinion that the income of the vacant chair be spent on the masjid-college in which the vacancy existed. Others still believed it should be divided among the professors of law teaching in the same town; if there were none in the same town, then to those of the town closest to that of the masjid-college in question.[413]

It will be noticed here that income from the endowment of a foundation had to be disbursed on the object of the foundation; and when it was no longer possible to do so, as in the case of a foundation in ruin, the income had to be transferred to another waqf serving the same, or a similar, object, a practice known in Western law as the cy près doctrine.

3) Disbursements When Deed Was Lost

It often happened that the waqf instrument was lost, and the mutawalli was not sure about the exact shares of the beneficiaries. Ibn Nujaim was of the opinion that the mutawalli should be guided by the custom of the mutawallis preceding him and the payments made previously by them over the years, regarding the amounts paid and to whom they were paid.[414] On the other hand, Haitami recorded an opinion according to which stipends were determined on an equal share basis.[415] The equal shares should, of course, be understood to have been applied to beneficiaries of the same class; and it is also to be assumed that not only should the deed be lost, but that no one knew for certain what stipulations had been made concerning the shares.

4) Disposition of Salary of Professor without Students

Al-Asbahi (d.700/1300) was once asked about the proceeds from an endowed post for a teacher of the Koran in a certain town where there were no students to be found. His answer was that the teacher could be paid only for actually teaching. The proceeds could not be transferred to another town, according to the opinion of the ancient jurisconsults (al-mutaqaddimun); but the moderns (al-muta'akhkhirun) allowed this transfer to be carried out.[416]

It follows that a professor could not be paid as a 'research professor' for research and publication. In the Middle Ages, writing books was a function of teaching, connected with an oral process of teaching, including dictation and note-taking. Books were meant for students; they were the direct result of the teaching process. Professors were paid for actually teaching the students; books were the by-product of that teaching. The summa works belonged to this category of works in Islam, as well as in the Christian West.

Chapter 2

INSTRUCTION

I. DIVISIONS OF THE FIELDS OF KNOWLEDGE

1. Ibn Butlan and the Tripartite Division

The physician Ibn Butlan (d.460/1068) was quoted reminiscing about his contemporaries who had left the scene, their lives claimed by the calamities of the first half of the fifth/eleventh century. After recalling them one by one, he laments them with this last tribute, a lonely man aching with the void they left behind: fa 'nṭafa'at suruju 'l-ʿilm; wa-baqiyati 'l-ʿuqūlu baʿdahum fī 'ẓ-ẓulma (thus the lamps of learning burned out; and with their passing, minds became enveloped in the gloom of ignorance).[1] In naming these luminaries, Ibn Butlan listed the three major divisions of the sciences that had developed in Islam by the middle of the third/ninth century: the Islamic sciences, the philosophical and natural sciences, and the literary arts.[2]

The relative importance of these three divisions and their interrelationship may best be represented by an isosceles triangle turned upside down, with the first two divisions at either end of the upturned base, and the third division at the base of the triangle's down-turned tip. The Islamic sciences would occupy the place of honour at the right angle, the philosophical and natural sciences at the opposing left angle on the same level, and the literary arts at the lower subordinate angle, with its two sides leading up to the two superior divisions.

The relative institutional importance was another matter. The Islamic sciences had total control over the institutions of learning, their ascendancy beginning to take place definitively after the failure of the rationalist-led Inquisition of Ma'mun, and reaching its height by the time the fifth/eleventh century had moved to its mid-point. In this division, Islamic law was crowned queen of the sciences and reigned supreme, while the literary arts served as her handmaids. The other division, called 'the sciences of the Ancients', that is of the Greeks, while opposed for its 'pagan' principles by every believing Muslim scholar among the faithful, commanded nevertheless an unpublicized, silent, begrudging, respect. These sciences were studied in private, and were excluded from the regular courses of Muslim

institutions of learning. The religious sciences were at the forefront of education. With the rise of dialectic, jadal, as applied to the study of legal theory and methodology, usul al-fiqh, the literary arts were relegated to the background.

2. The Subordination of the Literary Arts

a. Tha'lab and the Place of Grammar

The grammarian Tha'lab whose life spanned three quarters of the third / ninth century (d.291 / 904) complained of having spent his life in a field of knowledge that had no future in the Hereafter. The anecdote indicates three religious sciences which, as of his day, were dominating the field of education, namely the sciences involved with the Koran, hadith and law:

> The scholars of the Koran have occupied themselves with the study of the Koran and succeeded; and the scholars of the law have done the same with law and succeeded; and the scholars of hadith have succeeded by studying hadith; but as for me, I have occupied myself with 'Zaid and 'Amr'! I wish I knew what is to become of me in the Hereafter![3]

Tha'lab was addressing his complaint to the famous scholar of the Koran, Abu Bakr b. Mujahid (d.324 / 916), who is then said to have seen a dream in which the Prophet appeared to him, charging him to tell Tha'lab that his science of grammar is one of which all other fields are in need.

This anecdote brings out two interesting points. In Arabic the scriptures, Koran and hadith, depended for their understanding on a thorough knowledge of grammar. The other point is that the Koran, hadith, and law were the most important subjects. Grammar, a term used to encompass the literary arts including poetry, was an indispensable aid to understanding the language of the Koran and hadith, though subordinate to them and to the law as a subject of the curriculum. In the fourth / tenth century, specialization in poetry alone drew the following critical remark from the seventh / thirteenth century biographer Ibn Khallikan (d.681 / 1282) who, speaking of the poet as-Sari ar-Raffa' (d.362 / 973), said: 'He is incapable of any other subject but poetry' (lā yuḥsinu mina 'l-'ulūmi ghaira qauli 'sh-shi'r).[4] The remark was equally valid for the period of the poet as for that of Ibn Khallikan, who was dealing with the accomplishments of men of learning up to his period.

b. Ghulam Ibn Shunbudh and the Place of Poetry

Poetry was justified religiously on the basis that it was quoted as textual evidence of lexical meanings of the Koranic text. Ghulam Ibn Shunbudh (d.387 / 997), a Koranic scholar, was heard to say: 'I know by heart fifty thousand verses of poetry as documentary proof for the meaning of words in the Koran' (aḥfaẓu khamsīna alfi baitin mina 'sh-shi'ri shawāhida li 'l-Qur'ān).[5]

The literary arts continued to live under the shadow of the religious sciences, drawing their legitimacy in institutions of learning from the benefit they brought to the study of sacred scripture, but as time passed their cultivation deteriorated deplorably. Muhammad Amin al-ʿUmari (d.1203/1789) was still lamenting their neglect in the eighteenth century, arguing not only that they should be cultivated for the making of the educated man, but also as tools for the better understanding of scripture. They had come to be neglected even for this purpose.[6]

3. Waqf and the Dichotomous Division of Knowledge

A striking feature of Muslim education in the Middle Ages was the dichotomy between two sets of sciences: the 'religious' and the 'foreign'.

This dichotomy would not be so remarkable were it not for the fact that actual intellectual activity embraced the two sets, and scholarly production was prosperous in both. For a long time, this phenomenon obscured our understanding of the true nature of the madrasa, an institution which, as a result, was readily assimilated to the university because it was assumed that all subjects were taught in it. The assumption was natural: the madrasa was obviously Islam's institution of higher learning, as the university was that of the Christian West. In reality, however, neither the madrasa nor its cognate institutions harboured any but the religious sciences and their ancillary subjects. If such was the case, how is one to explain the flourishing of the philosophical and natural sciences? That they flourished in Islam there can be no doubt. A perusal of the works of Carl Brockelmann[7] and Fuat Sezgin[8] would be proof enough. It was this prolific production that spilled over to the Muslim and Christian West creating the translation movement, and constituting one of the most important factors in bringing about the renaissance of twelfth-century Europe.

The introduction of Greek works into Islam had a profound influence on the development of Islamic thought and education. Islam, like Patristic Christianity before it, had to face the problem of how to assimilate the 'pagan' knowledge of the Greeks to a conception of the world that included God as its creator. The development of Islamic thought that attempted to bring a solution to this problem took place both within and without institutionalized learning. The solution, such as it was, came as a result of the interplay between the traditionalist forces represented by the madrasa and cognate institutions, and rationalist forces represented by the dar al-ʿilm and its cognates. By the time the traditionalist institutions had won the battle against those of rationalism and absorbed them, they had also absorbed a great amount of what they had originally opposed.

The struggle was uphill and slow-going; the main obstacle being

that the Islamic waqf, upon which rested the whole edifice of institutions of learning, excluded any and all things that were considered to be inimical to the tenets of Islam. Hence the exclusion of the godless 'sciences of the Ancients' from the curriculum. Philosophical doctrines clashed with such monotheistic doctrines as the existence of a personal, provident, almighty God, the non-eternity of the world, and the resurrection of the body.

The waqf's exclusory rule did not succeed in excluding the foreign sciences. These were represented in the libraries, where Greek works were preserved, and disputations took place on rationalist subjects. The exclusion meant that the study of the 'foreign sciences' had to be pursued privately; they were not subsidized in the same manner as the Islamic sciences and its ancillaries. But there was nothing to stop the subsidized student from studying the foreign sciences unaided, or learning in secret from masters teaching in the privacy of their homes, or in the waqf institutions, outside of the regular curriculum.

Some of these masters were jurisconsults and theologians who had achieved eminence in the fields of the 'sciences of the Ancients', as for example the Shafi'i jurisconsult Saif ad-Din al-Amidi (d.631 / 1234). Conversely, among the exponents of the 'Ancient Sciences', there were those who had achieved eminence in the Islamic sciences, like the philosopher Ibn Rushd (Averroës; d.595 / 1198) in Maliki jurisprudence. Such a mixture of supposedly irreconcilable subjects would not have been possible in a system where there was no easy access to the Ancient Sciences. Not only was access easy, it was in turn concealed, condoned, allowed, encouraged, held in honour, according to different regions and periods, in spite of the traditionalist opposition, the periodic prohibitions, and autos-da-fé.

Generally speaking, the dichotomy between the two sets of sciences was maintained. A professor could teach fiqh, usul al-fiqh, madhhab law, khilaf law, munazara, all of which fall within the category of legal sciences; he could teach the sciences of the Koran, of hadith, and the ancillary sciences; unless the founder of the institution had decided to limit his teaching to a particular field or fields.

It did happen, however, in the case of a professor whose repertory included fields from both sides of the dichotomy, that he would, in his partisanship for the rationalist fields, teach them under the umbrella of hadith. This was, for instance, the case with Sadr ad-Din b. al-Wakil (d.716 / 1316), who taught, under the guise of hadith, the following: medicine, philosophy, kalam and other fields belonging to the 'sciences of the Ancients'.[9]

The dichotomy in the fields of knowledge was matched by a dichotomy in the institutions of learning. The Islamic sciences and ancillaries were taught in the mosque, and in those institutions which developed later, such as the madrasa and the ribat, the dar al-hadith

and the dar al-qur'an. Generally, these sciences were 'ilm at-tafsir, Koranic exegesis; 'ilm al-qira'a, the science of the variant readings of the Koran; 'ilm ('ulum) al-hadith, the sciences of tradition; 'ilm usul al-fiqh, the science of legal theory and methodology; fiqh, jurisprudence; and usul ad-din, the principles and sources of religion.

The ancillary sciences were those of the Arabic language, 'ulum al-'Arabiya. These, according to al-Anbari (d.577/1181), were: nahw, grammar; lugha, lexicology; tasrif, morphology; 'arud, metrics; qawafi, rhyme; sun'at ash-sh'r, prosody; akhbar al-'arab, Arab tribal history; and ansab, Arab tribal genealogy.[10] Anbari then said that to these eight fields of 'ulum al-adab, the literary arts, he added two others which he originated, namely: (1) 'ilm al-jadal fi 'n-nahw, the science of dialectic for grammar, and (2) 'ilm usul an-nahw, the science of grammatical theory and methodology, on the analogy of usul al-fiqh, legal theory and methodology, since both grammar and law are rational sciences derived from what is non-rational, that is, transmitted by tradition.[11]

The Islamic sciences were referred to as al-'ulum al-islamiya, Islamic sciences, al-'ulum ash-shar'iya, or al-'ulum al-mutasharri'a,[12] the sciences prescribed by the religious law, as opposed to 'ilm al-awa'il, the learning or science of the Ancients. Because of the dichotomy, two tendencies developed in the history of Muslim education: (1) institutionalized learning, which followed traditionalist lines, was accepted by the consensus of the Muslims, and financially supported by men of means among them; and (2) non-institutionalized learning, which followed rationalist lines, was discreetly taught for the most part, in the privacy of homes, and studied privately in the dar al-'ilm institutions as long as they lasted, up to the middle of the fifth/eleventh century, at which point the madrasa had begun to flourish.

Interest in the 'foreign sciences' occurred early in Islam, sometime before the caliphates of Harun ar-Rashid (caliphate: 170-193/786-809) and al-Ma'mun (caliphate: 198-218/813-33), the latter mainly responsible for the introduction of Greek works into Islam and their translation into Arabic. The renaissance, however, did not occur until the fourth/tenth century, after the period of the great influx of Greek works in philosophy and medicine, and their assimilation, in the third/ninth century. This was also the period of the great Nestorian translators, headed by Hunain b. Ishaq (d.260/873), and his son, Ishaq b. Hunain (298/910), which was followed by the Sabian group of Harran, headed by Thabit b. Qurra (d.299/901).

The intellectual awakening took the country by storm. It seized the imagination of all intellectuals, the philosophers, the rationalist theologians, and traditionalist jurisconsults. Before it took its hold on

law, however, it was used as a weapon by the rationalist theologians against the adherents of traditionalism during the Inquisition. The Mu'tazilite theologians had secured the support of the caliph al-Ma'mun and after him that of al-Mu'tasim and al-Wathiq, and, for a short time, al-Mutawakkil. They sought to force upon the traditionalists their rationalist doctrine of the 'createdness of the Koran'. But their efforts ended in failure. The Mihna went down in Islamic history as the initial triumph of traditionalism, from which emerged the figure of Ahmad b. Hanbal, its great charismatic leader.

But while the traditionalists triumphed, traditionalism did not escape being influenced by its adversaries, the rationalists. The weapons of dialectic were gradually absorbed into law. For excellence in law was achieved through disputation built on expertise in two essential fields: khilaf, disputed questions, and jadal, dialectic.

II. ORGANIZATION OF LEARNING

1. Curriculum

Books on the theory of Muslim education suggest sequences of courses that should be followed. Though these suggestions differ somewhat, a pattern is noticeable. On the other hand, the sequences of courses found in the biographical notices of professors, either in reference to the courses they taught or to their own careers as students, indicate the lack of a prescribed pattern. The lack of a unified programme of studies should not be cause for surprise. It was in part due to the fact that the founder of an institution of learning had freedom of choice in the organization of his foundation, including the choice of courses taught.

a. Theoretical Sequence of Courses: Two Examples

The sequence of courses appears to have proceeded in the following order: Koran; hadith; the Koranic sciences: exegesis, variant readings; the sciences of hadith, involving the study of the biographies of the transmitters of hadith; the two usuls: usul ad-din, principles of religion, and usul al-fiqh, principles, sources and methodology of the law; madhhab, the law of the school to which one belonged; khilaf, the divergences of the law, within one's own school, as well as between schools; and jadal, dialectic.

1) Haitami

A sequence similar to the one above is cited by Haitami:[13] Koranic exegesis, hadith, the two usuls, madhhab, khilaf and jadal. He then quotes Badr ad-Din b. Jama'a (d.733/1333) as recommending the following sequence when the institution of learning has many subjects in its curriculum: exegesis, hadith, usul ad-din, usul al-fiqh, madhhab, khilaf, nahw and jadal. This sequence is based on the place of honour attributed to the subject.[14]

2) Hajji Khalifa

Ḥajji Khalifa[15] gives the order of subjects in accordance with their importance, pointing out that the propaedeutic subjects should precede those desired in themselves. Likewise, all subjects dealing with the study of words and expressions should be propaedeutical to those dealing with concepts. Thus, literature should be studied before logic; and both of these before the principles of jurisprudence; and the latter before disputed questions. He then cites three reasons why one subject should be studied before another: (1) because the subject given priority is more important to the one following it; for instance, in law those duties that are of individual obligation (fard 'ain) are placed before those of general obligation (fard kifaya), and the latter before one recommended (mustahabb), and the latter before one indifferent (mubah); or (2) because it is propaedeutical to the subject following it; as, for instance, grammar before logic; or (3) because it forms part of the subject to follow it, since the part is placed before the whole; thus morphology before syntax in the study of grammar.[16]

The theorists of education gave much attention to the sequence that should prevail in studies, perhaps because actual practice was rather haphazard.

b. Examples of Actual Sequences

Now and then a biographical notice on an intellectual will have some reference to the subjects he taught and the sequence he followed.

1) Sequences Taught

a) *Shafi'i* (d.204/820). Shafi'i's teaching day proceeded as follows, according to one of his star disciples, ar-Rabi' b. Sulaiman.[17] Shafi'i would sit in his halqa after the subh-prayer and receive the students of the Koran (ahl al-Qur'an). At sunrise they would leave, and he would then receive the students of hadith (ahl al-hadith). When the sun had risen to a higher position (idhā 'rtafa'ati 'sh-shams), they would leave and the halqa would be devoted to mudhakara, discussion, and nazar, disputation. In the late morning, the disputants would leave and the students of 'Arabiya, prosody, grammar and poetry would come and remain until close to the noon hour, at which time Shafi'i would get up and leave.

b) *Abu 'l-Hasan an-Nahwi* (d.320/932). The sequence of subjects in a day's teaching for the grammarian Abu 'l-Hasan an-Nahwi was as follows, according to Abu Haiyan at-Tauhidi (d.414/1023).[18] He would begin by teaching the Koran, and its variant readings. He would then go on to hadith. If an unknown report came up, or an aberrant reading appeared, he would explain and elaborate, and would pose questions to his graduate disciples (ashab) regarding these. He also taught the *Mujālasāt* of Tha'lab mornings and evenings.

c) *Ibn Abi Muslim al-Faradi* (d.406/1016). The jurisconsult and

Koranic scholar, Ibn Abi Muslim al-Faradi, began his classes every day by teaching the Koran. He had students of all ages attending, whose ranks in class were decided on the basis of their knowledge, irrespective of age and dignity.[19] After his lecture on the Koran, he would personally take up the teaching of hadith, rather than relegating it to an assistant, which practice was widespread because it involved tedious dictation. He would continue the long process of reading and dictating hadith until he had come to the end of his endurance, at which time he would lay down his book, dismiss the class and leave.[20]

2) Sequences Learned

a) *Abu 'l-Qasim al-Qushairi* (d.465/1073). Abu 'l-Qasim al-Qushairi, author of the famous *Risāla* on Sufism, was advised by his father-in-law, the Sufi ad-Daqqaq, to study the Islamic sciences. He therefore followed the law course of Abu Bakr Muhammad b. Abi Bakr at-Tusi (d.420/1029); then he studied kalam under Abu Bakr b. Furak (d.406/1016) until he became proficient in it; then he went to study further the science of kalam with Abu Ishaq al-Isfara'ini (d.418/1027), and combined the methods of these two mutakallims; after which he began to study the kalam works of Abu Bakr al-Baqillani (d.403/1013), all three being Ash'ari mutakallims. The biographer goes on to say that Qushairi was a very learned man ('allama) in the following fields: fiqh, exegesis, hadith, usul, adab-literature, poetry, the art of the secretary (kitaba) and Sufism.[21]

b) *Abu 'Ali al-Fariqi* (d.528/1134). A resident of Maiyafariqin, Abu 'Ali al-Fariqi, was born in 433/1042, studied fiqh in his home-town under Abu 'Abd Allah Muhammad al-Kazaruni (d.455/1063), a disciple of al-Mahamili. After Kazaruni died in 455 H., Fariqi went to study with Abu Ishaq ash-Shirazi in Baghdad, in 456 H.; he was now twenty-three years old. He studied Shirazi's law course for four years, then went to study the *Shāmil*, a fiqh work, under the direction of its author Ibn as-Sabbagh, after which he returned to Shirazi and remained with him until the latter's death in 476 H. Shirazi and Ibn as-Sabbagh were both professors of Shafi'i law.[22]

c) *Ibn al-Waqshi of Toledo* (d.489/1096). Speaking of Ibn al-Waqshi al-Katib of Toledo, Yaqut lists the following fields of knowledge to his credit: 'Arabiya, lexicology, poetry, rhetoric or oratory (khitaba), hadith, fiqh, constitutional and administrative law (al-ahkam), and kalam; and further on in the biographical notice, Yaqut adds: logic, geometry (handasa), genealogy, narratives relating to words and deeds of the Prophet (al-akhbar), and duties and rights of the executive head of the community, including international law (siyar).

d) *'Abd al-Ghafir al-Farisi* (d.529/1134). Grandson of the Shafi'i Sufis Abu 'l-Qasim al-Qushairi and Abu 'Ali ad-Daqqaq (d.405/

1015), Abd al-Ghafir al-Farisi was born in 451 / 1059. He attended elementary school (maktab) where he learned to recite the Koran. At the age of five, he was taught the profession of faith in Persian, and began in 457 to learn hadith from his maternal uncles. When his father returned from an absence of ten years, he had already learned hadith, finished memorizing the Koran and begun to study the literary arts. His father then had him continue the study of hadith, and attend an elementary school (kuttab), other than the first mentioned. Then he handed him over to 'Ali b. Faddal al-Maghribi (d.479 / 1086),[23] of whose works he copied as much as he could, recited them to him, and received from him certificates of audition (sama') for them. He then studied the principles of religion and Koranic exegesis with two maternal uncles, taking lecture-notes on kalam from one of them, Abu Sa'id, and did the ta'liq of the first quarter of fiqh in madhhab- and khilaf-law. He also learned from 'Abd ar-Razzaq al-Mani'i some of the method (tariqa) of al-Imam al-Husain al-Marwarrudhi (d.462 / 1069)[24] in law. He then went to serve (as khadim, student-servitor) Imam al-Haramain for four years, during which he completed the *ta'liq* of madhhab- and khilaf-law. After this he travelled, learning hadith in Nasa and teaching it in Khwarazm. From here he went to Ghazna, to Lahore, to India where he taught the *Laṭā'if al-ishārāt* of his grandfather al-Qushairi (d.465 / 1073). Back in Nishapur, he dictated hadiths in the Mosque of 'Aqil on Monday afternoons for a number of years. He then wrote *al-Mufhim li-Ṣaḥiḥ Muslim*, and finished writing *as-Siyāq li-Tarīkh Nīsābūr* towards the end of dhū 'l-qa'da 510 (beginning of April, 1117). He had received ijazas from Abu Bakr al-Khatib (d.463 / 1071) of Baghdad, among others, his father having taken for him and his classmates ijazas for every hadith he had heard on his travels.

e) *Abu Bakr b. 'Abd al-Baqi* (d.535 / 1141). Born in 442 / 1050, Abu Bakr b. 'Abd al-Baqi learned the Koran by heart by the age of seven. He had begun to learn hadith in 445 H., at the age of three. He then studied law under Abu Ya'la b. al-Farra'. On his travels, he was taken prisoner by the Byzantines and held for one and a half years during which period he learned Greek. His biographer Ibn Rajab (d.795 / 1392) points out that he excelled in mathematics.[25] There is hardly any reason to doubt his authorship of a *Commentary* on the tenth book of Euclid, cited by George Sarton in the *Introduction to the History of Science*,[26] given his biography and his autobiographical notes on his imprisonment in Byzantium, his learning of the Greek language and excelling in the field of mathematics.[27] The *Commentary* on Euclid was translated into Latin by Gerard of Cremona (d.1187 / 583 H.).[28]

f) *Al-Luraqi of Andalusia* (fl.618 / 1221). The Spanish Muslim al-Luraqi studied the Koran in Murcia and Valencia under several teachers; then went to Cairo in 601 / 1204 continuing his study of the

Koran, then to Damascus in 603/1206 for Koranic studies and literature. He studied the grammar of Sibawaih, *al-Kitāb*; from Damascus, he went to Baghdad and studied al-Khatib al-Baghdadi's biographical work, *Tārīkh Baghdād*, mainly on muhaddithun. His biographer then adds: 'As for his knowledge of the law, legal theory and methodology and the 'science of the Ancients', logic and the like, he was of extraordinary eminence.'[29]

g) *Al-Qifti* (d.646/1248). Yaqut cites al-Qifti's fields of knowledge, mixing the Islamic sciences with those of 'the Ancients'. He attributes to him the knowledge of all the sciences of the law, barring none: (wa-jamīʿi ʿulūmi 'l-fiqhi ʿalā 'l-iṭlāq). The list of his studies includes: grammar, lexicology, fiqh, hadith, Koranic sciences, usul, logic, mathematics (riyada), astronomy, geometry, history, and hadith criticism (ʿilm al-jarh wa 't-taʿdil).[30]

The foregoing cases give some idea regarding the sequence of subjects. There was no set curriculum that all had to follow. Each institution had its subjects set for it by the desire of its founder, who, most likely in the majority of cases, followed the desire of the individual professor for whom he had founded the institution.

Generally speaking, the arts came before specialization in any particular field. Specialization usually followed the study of the Koran, hadith, grammar, and literature. At the time of the rise of the masjid- and madrasa-colleges for law, specialization for the best representatives of the Islamic sciences meant excellence in the field of law supported by a high degree of competence in the other Islamic fields. Ibn al-Jauzi censured the Sufi Hammad ad-Dabbas (d.525/1131) whose Sufism he considered suspect because 'he was destitute of the Islamic sciences', 'for this reason', continued Ibn al-Jauzi, 'he fooled only those who knew no better'.[31] The tendency in Islam was to encourage a diversification of the sciences to be learned. A learned man should have some knowledge of every science, for every field of knowledge has its seekers.[32]

c. Curriculum Vitae of ʿAbd al-Latif al-Baghdadi (d.629/1231)

Ibn Abi Usaibiʿa's biographical notice on ʿAbd al-Latif al-Baghdadi gives a detailed description of this intellectual's educational and teaching career, and therefore some insight into one of the best products of the Muslim educational system at the time.[33] ʿAbd al-Latif relates that most of his time, in early youth, was taken up with the study of hadith, and that ijazas were obtained for him from the great masters of Baghdad, Khurasan, Syria and Egypt. All of this had been done under the guidance of his father who had seen to his learning of hadith. At the same time, he was learning how to write (al-khatt), memorizing the Koran, studying Arabic literature, including the *Maqāmāt*, *Assemblies* of al-Hariri, and the poetry of al-Mutanabbi (d.354/965), among others, as well as two epitomes, one on fiqh and

another on grammar.

'Abd al-Latif goes on to relate that when he became an adolescent, his father took him to the grammarian Kamal ad-Din al-Anbari, his father's classmate at the Madrasa Nizamiya of Baghdad who was studying law. Al-Anbari found the youth not quite prepared to study with him; so he suggested one of his disciples, al-Wajih al-Wasiti (d.612/1215), as a private instructor. The routine was developed where Wasiti would teach 'Abd al-Latif all the grammatical commentaries in a class he held in the Zafariya mosque. When he went for his lessons to al-Anbari, 'Abd al-Latif went along, listening to Wasiti's recitations and to Anbari's explanations. Returning to his room at night, he would learn the lesson, rehearsing it until he had learned it by heart. He kept up this routine of studying with 'the Master and the Master's Master' (ash-Shaikh wa-Shaikh ash-Shaikh).

'Abd al-Latif learned the *Luma'*, a work on grammar by Ibn Jinni (d.392/1002), in eight months, hearing each day a commentary on it, mostly from what others were reading in class. Then he would go to his room and study the commentary of the grammarian ath-Thamanini, and those of 'Umar b. Hamza, Ibn Barhan (d.456/1064), as well as all the other commentaries he could find.

He so progressed in his knowledge of grammar that he had his own followers among the students. To them he would comment on the grammar of Ibn Jinni to the extent of several fascicles on each one of its chapters without exhausting his knowledge regarding it.

He learned by heart the *Adab al-Kātib* of Ibn Qutaiba, as well as his *Taqwīm al-lisān*.[34] The former work took him several months to learn; the latter he learned in fourteen days, one day for each fascicle. He then learned Ibn Qutaiba's *Mushkil al-Qur'ān* and his *Gharīb al-Qur'ān* in a short period.

Other works learned were: *al-Īḍāḥ* by Abu 'Ali al-Farisi (d.377/987), with all its commentaries; *at-Takmila*, by the same author;[35] *al-Muqtaḍab*, by al-Mubarrad (d.285/898); *Kitāb al-Kuttāb*, by Ibn Durustawaih (d.347/958).[36]

Throughout this period 'Abd al-Latif kept up his study of hadith and fiqh under the direction of his professor, Ibn Fadlan, in the second-floor madrasa called Dar adh-dhahab ('House of Gold'), founded by Fakhr ad-Daula b. al-Muttalib.[37] 'Abd al-Latif reports that his professor, Kamal ad-Din al-Anbari, had written one hundred and thirty works, the majority of them on grammar, others on law, the two usuls (usul al-fiqh and usul ad-din), Sufism and asceticism, most of which he learned by hearing them in lectures (samā'an), reciting them in class (qirā'atan) and learning them by heart (wa-ḥifẓan). Under the direction of this professor he learned by heart most of the grammar of Sibawaih (d.c.177/793), *al-Kitāb*; and he applied himself eagerly to mastering the *Muqtaḍab* of al-Mubarrad. After the professor's death,

he devoted himself exclusively to Sibawaih's *Kitāb* and its commentary by as-Sirafi (d.368/979).

Continuing the recital of his student years, 'Abd al-Latif says that he then studied several works under the direction of Ibn 'Ubaida al-Karkhi. Among these were: *Kitāb al-uṣūl*, by Ibn as-Sarraj (d.316/929), the grammarian, the copy he studied being part of the waqf of Ibn al-Khashshab (d.311/923) in the Ribat of al-Ma'muniya in Baghdad. Under his direction also he studied the law of intestacy, and the work on prosody by at-Tibrizi (d.502/1109), lecturer on literature at the Madrasa Nizamiya of Baghdad.

'Abd al-Latif heard the lectures of Ibn al-Khashshab on *Ma'ānī 'l-Qur'ān*, the latter having studied the work under the direction of the woman scholar Shahda bint al-Ibari (d.574/1178). After this, 'Abd al-Latif studied alchemy for some time under the direction of Ibn an-Na'ili who had come to Baghdad from North Africa. Ibn an-Na'ili influenced him particularly by his method of teaching, regarding which 'Abd al-Latif does not elaborate, and by opening his eyes to other fields of knowledge. After Ibn Na'ili's departure, he gave himself over to independent study (ishtighal). Forsaking sleep and pleasures, he applied himself eagerly to the study of Ghazzali's works, of which he names *al-Maqāṣid*, *al-Mi'yār*, *al-Mīzān*, and *Miḥakk an-naẓar*. From Ghazzali's works he turned to those of Ibn Sina (Avicenna; d.428/1037), citing *Kitāb an-Najāt*, which he learned by heart, and *ash-Shifā'*, which he transcribed and studied. He also studied *at-Taḥṣīl*, by Bahmanyar (fl.430/1031), a disciple of Ibn Sina.

He transcribed and studied a good many works by Jabir b. Haiyan and Ibn Wahshiya (fl. 2nd half 3rd/9th c.). Then he began once again to delve into alchemy, being influenced, in so doing, particularly by Ibn Sina, whom he later repudiates.

In the year 585 H., at the age of 28, there being no one else in Baghdad to interest him among its intellectuals, he went on to Mosul. Disappointed in his expectations there, he was, however, consoled by the presence of Kamal ad-Din b. Yunus (d.639/1242), expert in law and arithmetic, and, like himself, attracted by the practice of alchemy. It was in Mosul that students began to flock to 'Abd al-Latif, and offers of all sorts of posts were made, of which he chose the professorship of law in the Madrasa of Ibn Muhajir, on the second floor, under which was a dar al-hadith. He stayed in Mosul for one year studying independently, night and day.

'Abd al-Latif then goes on to tell of his travelling to Damascus and Cairo, of the scholars he met, and of the works he wrote in Damascus. Among the scholars he went to meet in Cairo was Musa b. Maimun al-Yahudi (Maimonides, d.605/1208). What he says of Shari'i in connection with the 'sciences of the Ancients' is interesting. Not having met him before, he was introduced to him by the imam of a

mosque where Shari'i was seated with a large party. He found him to have an excellent knowledge of the works of the Ancients (kutub al-qudama') and those of al-Farabi (d.339/950). 'Abd al-Latif says that prior to this he had no regard for such works in the belief that all wisdom was in the possession of Ibn Sina, who had inserted it into his books. But little by little, Shari'i introduced him to the Greek works and those of Farabi and Alexander Themisthius, until he won him over.

When Saladin (regency: 564-89/1169-93) made a truce with the Franks and returned to Jerusalem, 'Abd al-Latif went there to join his entourage, carrying with him all he could of the works of the Ancients. Saladin assigned to him a monthly stipend of thirty dinars, and Saladin's sons added sums of their own, bringing the total monthly stipend to one hundred. This amount, at the time, was ten times the normal monthly stipend of a college professor of law.

'Abd al-Latif continues in his own words: 'I returned to Damascus and devoted myself to studying and lecturing in the [Umaiyad] Mosque. And the more I studied the works of the Ancients the more my desire for them increased, while it waned for the books of Ibn Sina. I came to realize the falsity of alchemy, and to know the truth of the situation as to its foundation, its founders, their lies and their motivations. Thus I was saved from two great terrible and humiliating errors. My thanks to God were thus redoubled, for most intellectuals have followed the road to perdition simply through alchemy and the books of Ibn Sina.'[38]

After recounting the manner of Saladin's death following a fever and blood-letting by an incompetent physician, 'Abd al-Latif goes on to describe his teaching routine at the Azhar Mosque in Cairo. He would teach his students there from 'the beginning of the day' to approximately four o'clock in the afternoon. In mid-day, he would teach students medicine 'and other subjects', meaning, perhaps, works of the Ancients. He would then return to the Azhar Mosque and teach other students, his teaching of the 'other subjects' apparently being done in private. At night, he would do his own studying.

He then took up residence in Cairo, with stipends and other forms of income coming to him from Saladin's sons. Egypt was hit by a plague among the cattle, and prices rose because of scarcity. He wrote a book describing the conditions then obtaining, entitling it, *Kitāb al-Ifāda wa 'li 'sti'bār fī 'l-umūr al-mushāhada wa 'l-ḥawādith al-mu'āyana bi-arḍ Miṣr.*

When al-Malik al-'Adil Saif ad-Din Abu Bakr took over the sultanate (596-615/1199-1218), dispersing the sons of his brother Saladin, 'Abd al-Latif moved to Jerusalem and remained there for a period, teaching a variety of subjects at the Aqsa Mosque. It was here again that he wrote many works. From Jerusalem, he moved to

Damascus, taking up residence in al-Madrasa al-'Aziziya in the year 604 H. Here, he began to teach law and pursue his own work. He had many students working with him independently in many different fields. In Damascus, he distinguished himself in the field of medicine in which field he wrote many works and achieved renown. Previous to this period, he had been known especially as a grammarian of repute. He then moved on to Aleppo and from there to Turkey (Bilad ar-Rum) where he resided for many years in the service of al-Malik 'Ala' ad-Din b. Bahram, governor of Arzanjan. He was well cared for by this governor to whom he dedicated a number of works, remaining in his service until the governor's defeat by the sultan Kay Qubad in 616 / 1219. 'Abd al-Latif resumes his narrative with the year 625 H., 17 dhu 'l-qa'da (18 October 1228) when he set out for Arzan ar-Rum and moved from place to place in Anatolia for the period of a year, ending up finally in Aleppo on Friday, the ninth of Shauwal (31 August 1229).

Here the narrative of 'Abd al-Latif ends and his biographer, Ibn Abi Usaibi'a, takes over. He tells us that 'Abd al-Latif fared very well in Aleppo where he wrote many works and where many students worked independently under his direction. He was treated generously by the governor. He applied himself to the teaching of medicine and other subjects, and frequented the Mosque in Aleppo to teach hadith and al-'Arabiya. In addition to this, he was forever at his studies, persevering in the writing of his works. The biographer says that he had hoped to meet 'Abd al-Latif while the latter was in Aleppo, but the meeting never took place, although his works and letters always arrived.[39]

'Abd al-Latif died in 629 / 1231. He had gone to Baghdad to see the caliph al-Mustansir and to present him with some of his works. But he fell on his arrival, died and was buried next to his father in the Wardiya Cemetery in Baghdad after a forty-five year absence from his native city. It is possible that his return to Baghdad and his presenting some of his works to Mustansir may have been connected with an eventual appointment to the celebrated new Madrasa of Mustansir for which ground was broken that year, the inauguration taking place after the usual two years of construction. In that case, 'Abd al-Latif would have most likely been its professor of Shafi'i law.

Ibn Abi Usaibi'a has quoted extensively from the autograph notes of 'Abd al-Latif. The following text contains his advice to students, a spiritual legacy that affords further important insights into the Muslim system of education:

> Every night, as you go to bed, you must call yourself to account, and look to see what good deed you have accomplished during your day, thanking God for it; and what evil deed you have

committed, that you may ask His forgiveness, resolving not to repeat it. Then concentrate on what good deeds you can perform the next day, asking Him to help you do them.

I commend you not to learn your sciences from books unaided, even though you may trust your ability to understand. Resort to professors for each science you seek to acquire; and should your professor be limited in his knowledge take all that he can offer, until you find another more accomplished than he. You must venerate and respect him; and if you can render him assistance from your worldly goods, do so; if not, then do so by word of mouth, singing his praises.

When you read a book, make every effort to learn it by heart and master its meaning. Imagine the book to have disappeared and that you can dispense with it, unaffected by its loss. Once you apply yourself eagerly to studying a book, trying to understand it, take care not to work on another, spending on it time which should be reserved for the one alone. Also, take care not to work on two subjects all at once, rather devote yourself steadily to the one subject for a year or two, or whatever period is necessary. Then when you have achieved your purpose with it, pass on to the next. Nor should you suppose that when you have acquired a science you can rest easy; on the contrary, you will have to keep it up so that it will grow and not diminish. The way to do this is to keep it in fresh rehearsal, calling it often to mind; and if you are a beginner, by reading aloud, and studying, and holding discussions with your peers. If an accomplished scholar, then by teaching and writing books. When you undertake to teach a science or to engage in a disputation on it, do not mix it with another; for every science is sufficient unto itself, able to manage without others. Your having recourse to one science for another is indicative of your inability to exhaust its contents, as one who would make use of one language for another when he knows it (imperfectly), or is ignorant of some part of it.

One should read histories, study biographies and the experiences of nations. By doing this, it will be as though, in his short life span, he lived contemporaneously with peoples of the past, was on intimate terms with them, and knew the good and the bad among them.

You should model your conduct on that of the early Muslims. Therefore, read the biography of the Prophet, study his deeds and concerns, follow in his footsteps, and try your utmost to imitate him. When you come to know his habits regarding food, drink, clothing, sleep, waking, sickness, medical treatment, enjoyments and the use of perfumes, and his relations with his Lord, his wives, his companions and his enemies, when you

come to know this, and do ever so little of what you have learned, then will you be a completely happy person.

You should frequently distrust your nature, rather than have a good opinion of it, submitting your thoughts to men of learning and their works, proceeding with caution and avoiding haste. Do not be conceited, for vanity will make you stumble, and obstinacy will bring about your downfall. He who has not sweated his brow going to the doors of the learned, will not strike roots in excellence. He who has not been put to shame by the learned, will not be treated with deference by the people; and he who has not been censured by the learned, will not prevail. He who has not endured the stress of study, will not taste the joy of knowledge. He who does not toil, will not prosper.

When you have finished your study and reflection, occupy your tongue with the mention of God's name, and sing His praises, especially at bedtime, so that your very essence becomes soaked up and your imagination permeated with Him, and you talk of Him in your sleep.

When you experience some joy or pleasure in worldly things, remind yourself of death and the transient quality of life and its various frustrations. When something saddens you, say 'We belong to God and to Him is our return!' When you commit a heedless act, say 'I ask God's forgiveness!' Keep the idea of death ever before your eyes, and make learning and piety your provisions on the road to the Hereafter.

When you want to disobey God, seek out a place to do so where He cannot see you. But know that people serve as the eyes of God on His servant, showing them the good that is in him though he may hide it, and the evil, though he may conceal it; so that his innermost self is exposed to God, and God exposes it to His servants. Take care, therefore, to make your innermost self better than your outward self, and your private life more radiant than your life in public.

Do not complain if this world should turn its back on you; for were it to turn its attention to you, it would distract you from the acquisition of excellent qualities. Rarely does a rich man delve deeply into learning, unless he is very high-minded or that he became rich only after having acquired his learning. I am not saying that this world turns away from the seeker of knowledge; on the contrary, it is he who turns away from it because his efforts are dedicated to learning; so he has no time left for things worldly. And worldly things are acquired only through avidity and much thought given to their ways and means; so when he neglects the means to acquire them, they do not come to him of themselves. Moreover, the seeker of knowledge is too high-

minded to be involved in base occupations, demeaning profits, all sorts of trafficking, lowering oneself to men of wealth and waiting in attendance at their doors. One of my friends has this verse to say in this regard:

He who strives earnestly in quest of the sciences
Is allowed by their dignity to escape the baseness of avid acquisition.

All methods of acquiring the things of this world call for spare time, skill and complete application. The student occupied with his studies is capable of none of this. Yet he expects the world to come to him without having the means at his disposal, that it seek him out without his striving for it as he would for anything else; that is wrong and excessive on his part. On the other hand, when a man masters his subject and becomes famous for it, he is courted from all sides, and offers of posts are made to him; the world comes to him submissive, and he takes it without sacrificing his dignity; his honour and piety are kept chaste.

Know that learning leaves a trail and a scent proclaiming its possessor; a ray of light and brightness shining on him, pointing him out; like the musk merchant whose location cannot be hidden, nor his wares unknown; like the torch-bearer walking in the deep black of the night. Moreover, the learned man is esteemed in whatever place or condition he may be, always meeting people who are favourably disposed to him, who draw near to him and seek his company, gratified in being close to him. Know, too, that the sciences seep away, then spring forth for a time, like vegetation or water springs; they shift from people to people, and from country to country.

2. Class Procedure

a. Position in Class

Abu Bakr ad-Dinawari (d.535/1141) related to his law student Ibn al-Jauzi the following anecdote going back to his student days, when he was studying law under the direction of Abu 'l-Khattab al-Kalwadhani (d.510/1116):

When I first began to study law I sat at the end of the study-circle, the members of which took their places according to their several grades. One day a discussion took place between me and a student who sat close to the professor, there being between us two or three students. On the following day I took my place as usual at the end of the study-circle. The man in question came and sat beside me. Whereupon the professor asked him: 'Why did you relinquish your place?' And he replied: 'I am in the same grade as this student. I shall sit with him so that I can benefit thereby.' By God! It was not long before I advanced in the field of law, and became strong in my knowledge of it, and I began to sit next

> to the professor with two students between me and the man in question.[40]

It follows from this passage that seating was arranged according to grade: the greater one's knowledge of the subject, the closer his position to the professor. Also, the seating arrangement changed in accordance with one's progress or lack of it; those close to the professor had to relinquish their seats in favour of the more successful students. The competition was keen and pursued without abatement. The significance of the seating of students in proximity to the professor was brought out by the phrase one often meets in biographical notices, qarrabahū ilaih: (the professor) 'brought the student close to him'.[41] It was this same Dinawari who, on the death of his professor, Kalwadhani, succeeded to his chair.[42]

In the above case, the student who sat next to the professor relinquished his place of honour of his own accord. In the following anecdote, the professor himself brought the bright student close to him. The anecdote is told in the words of Abu Sa'd al-Mutawalli (d.478/1086), who later was to become the professor of law of the Madrasa Nizamiya:

> I attended the class of Abu 'l-Harith b. Abi 'l-Fadl as-Sarakhsi, and sat among those of his fellows who were seated at the end of his class. A question was brought up for disputation, and I spoke and raised objections. When my turn was over, Abu 'l-Harith ordered me to move up closer and I did. And when my turn had come up again for disputation, he brought me closer still and continued to do so until my seat was next to him. And he saw to my needs and took me in as one of his fellows.[43]

Mutawalli considered his experience with Sarakhsi as being one of two occasions in his academic career that gave him great happiness. The other occasion was his promotion to the professorship of the Madrasa Nizamiya in the place of Abu Ishaq ash-Shirazi who had died. The students, however, begrudged al-Mutawalli's taking the exact place of his predecessor, rather than a place below it. Thus, not only students, but professors as well, had their ranking to adhere to, some professors being of lesser stature than others, not quite worthy enough to occupy the same place of honour.

Notice also that a professor chose his fellows (sahib, pl. ashab) from among the best of his students. A student did not automatically become a fellow of his professor once he finished his law course.

b. Function of Fellows

The professor chose his fellows from among his students of the terminal class. As his fellows, they were entitled to the seats closest to him, followed by the other students according to a system of priority based on actual progress in their special field of study. When a question was brought up for disputation, they debated it, and the pro-

fessor would step in only when there was need for clarification and to help them to carry the discussion to a conclusion.

Muhyi 'd-Din, qadi of Marand, related that when Fakhr ad-Din ar-Razi (d.606/1209) came there, he became a resident student of the madrasa in which Muhyi 'd-Din's father was professor of law. After finishing his legal studies, Razi began to study the philosophical sciences (al-'ulum al-hikmiya) on his own. He so distinguished himself that he had no equal in his day. Muhyi 'd-Din then met him again in Hamadhan and Herat and studied under his direction. This student of Fakr ad-Din ar-Razi gave the following description of the latter's class:

> When [Razi] sat to lecture, a group of his senior students [talāmīdhihī 'l-kibār] would take their places near him, such as Zain ad-Din al-Kashshi, Qutb ad-Din al-Misri, and Shihab ad-Din an-Nisaburi. These would be followed by the rest of the students and the rest of the people according to their grades ['alā qadri marātibihim]. When someone brought up a subject for disputation, the senior students would debate it. If the disputation became complicated, or an abstruse notion arose, the Professor would join in the disputation and provide a solution in a manner brilliant beyond description.[44]

c. Class Prayers

Classes began with a prayer and ended with a prayer. When the class followed on the heels of one of the five daily prayers, the professor would still begin his class with an invocation to God. Abu 'l-Hasan al-Khila'i (d.492/1099) used to say the following prayer upon concluding a class on hadith; it was reported on the authority of the hadith-expert, as-Silafi:

> Allāhumma! mā mananta bihī, fa-tammimhū; wa-mā an'amta bihī, fa-lā taslubhū; wa-mā satartahū, fa-lā tahtikhū; wa-mā 'alimtahu, fa 'ghfirhū.
>
> (O God! The favours Thou hast graciously shown, pray make them come to pass; and those which Thou hast granted, pray do not take away; and the faults Thou hast deigned to conceal, pray do not reveal; and for all our faults which Thou knowest, pray grant us their remission.)[45]

d. Daily Routine at the Madrasa Salihiya and Elsewhere

The waqf deed of the Madrasa Salihiya in Jerusalem required the salaried professor of law to come early to the college where the students were all brought together for him; then all began by reciting a part of the Koran. This was followed by a prayer said for the intention of the founder and for all Muslims. After this, the professor was to begin his lesson on madhhab law (law adopted by a given school of jurisprudence as having the consensus of its jurisconsults); this was followed by khilaf law, disputed questions; and finally usul law

(legal theory and methodology). Following these three branches of legal science, he was free to teach whatever he wished of the other Islamic sciences. Then the repetitors took over, each with those students assigned to him. He drilled them in the lessons they had had that morning with the professor. The repetitors were then to come back following the afternoon prayer to drill the students a second time. The professor was to teach every day of the week, except on regular holidays.

The five daily prayers were to be performed congregationally (jamaʻa), except for those who had a legally valid excuse. Students had to be residents of the college, and were not to be allowed to spend the night away unless excused by the professor for customary reasons, or unless the student was married, in which case he was to attend the college mornings and evenings (ṭarafai an-nahār). Students were bound to attend the second repetition, as well as the first.

The professor had the duty of looking after the students, encouraging those who worked, admonishing the negligent. The student who persisted in his negligence, after continued admonishment, was to be expelled by the professor, losing his scholarship; so also the student who was guilty of misconduct, unless he mended his ways. The professor of law had two functions, that of teaching the law and that of mutawalli. For his administration, he was to be paid from the proceeds of the endowment, as also for his teaching. He was free to do the teaching himself, or to hire a substitute-professor to do the teaching for him.[46]

Such was the situation in this college, according to its waqf deed. Elsewhere, matters could be different, according to the express wishes of the founder. In other colleges, the routine might be for students to be taken one by one, leaving after their allotted time was given them, rather than all remaining in class together. This caused difficulty at times, especially when the number of students was great (wa 'ṭ-ṭalaba jamāʻa mutaʻaddida) and they had to be tutored individually. In such cases, the question of priority would arise, and the rule of 'first come, first served' would apply, producing long queues, long before the time appointed for teaching.[47] The practice of taking students one by one was also a custom of repetitors taking advanced students on a 'first-come-first-served' basis. Difficulty arose when resident foundationers had to compete for attention, when their numbers swelled with the addition of externs. A legal opinion dealt with such a situation, giving the residents priority over the externs, who could benefit from the rule of 'first-come-first-served' only after the residents had finished their repetitions.[48]

In the teaching of hadith, it happened that more than one teacher could be conducting a class. Such was the case in the first part of the sixth/twelfth century in a class attended by Ibn al-Jauzi,[49] where

three professors of hadith presided, Abu Mansur Jawaliqi (d.540/1145), grammarian, who taught at the Madrasa Nizamiya, Abu 'l-Fadl b. Nasir (d.550/1155), and Sa'd al-Khair al-Andalusī (d.541/1146). The class was held in the residence of al-Jawaliqi and the book being taught was that of Abu 'Ubaid (d.c.223/837) entitled *Gharīb al-ḥadīth*, a collection of hadiths of rare occurrence.

3. Teaching Days and Holidays

There does not seem to have been a hard and fast rule regarding holidays. In one college, three days of the week were days on which there was no school, as would appear from a legal opinion. This was a college of law in which student attendance was kept, and where there were no stipulations in the deed of foundation regarding the issue. The question asked was that when a student was absent on a Monday, was it legally permissible to mark him down for both Monday and Tuesday; or when he absented himself on a Thursday, was it permissible to mark him down for Thursday, Friday and Saturday? The jurisconsult al-Firkah answered in the negative, in the student's favour.[50] Here it appears that Tuesdays, Fridays and Saturdays were days on which there was no school. Kamal ad-Din b. az-Zamlakani (d.727/1327) was reported as having taught every day of the week, 'even on Fridays and Tuesdays'; and he taught three days after the Feast day (of the Sacrifice), 'and kept teaching on Tuesdays. This is a remarkable thing, unheard-of, and not a single person has objected to it'.[51] Note here that Tuesdays and Fridays were non-teaching days. Moreover, as the deed of foundation appears not to have stipulated any conditions in this regard, the matter being one of custom, the professor could do as he pleased without violating its provisions. For instance, the fourth/tenth-century al-Mu'ammari taught only on Wednesdays.[52]

Besides Tuesdays and Fridays, it appears that a whole month was designated as a holiday, most likely Ramadan, the month of fasting. The following fatwa concerns a jurisconsult, resident fellow of a college, who absented himself during vacation: could he be denied his stipend (jamikiya)? The opinion was that having absented himself only during the 'vacation month' (shahr al-bitala), he had the right to the stipend allowed a student who remained at the college; for during vacation there was no difference between a student who remained at the college and one who left for the month.[53] A fatwa listed three months as 'the customary period of vacation, Rajab, Sha'bān and Ramaḍān' (al-biṭāla al-muta'ārafa fī rajab, sha'bān wa-ramaḍān).[54] Another fatwa dealt with a case where the college founder did not stipulate the days on which there would be no teaching: could it be legally permissible for the mutawalli to cut off the stipend of the beneficiaries for those days? Could the founder stipulate other days as holidays? The opinion here was that the muta-

walli could not deduct from the stipends of students absenting themselves on customary holidays, nor could he stipulate other than the usual days, because custom would prevail.[55]

Another question was whether a resident fellow of a college, who absented himself one or two nights, or on Friday, for a necessary reason, while a constant resident of the college, residing there with all his belongings – was he still considered a resident if the deed of the college stipulated residence? The opinion was that such absences did not violate the deed's stipulation regarding residency; a second jurisconsult concurred.[56] The prevailing custom, therefore, seems to have been, at least at the times cited, but possibly for many centuries, that two days of the week were holidays, Tuesdays and Fridays.

Students in Tashköprüzadeh's (d.968/1560) time, in the tenth/sixteenth century, had no school on Tuesdays or Fridays. To these two holidays, Tashköprüzadeh added one of his own, Monday, because, it was explained, he was studying independently the works of Taftazani (d.792/1390).[57]

Fridays, besides being holidays, were also, generally speaking, set aside for disputations, academic sermons and the issuing of legal opinions. Shafi'i set aside Friday for disputation,[58] as did others after him; the Muslim sabbath appears to have been a favourite day for conducting disputations on all questions of religious science. Abu Ya'la b. al-Farra' used to attend sessions of disputation held on Friday (wa-kāna yaḥḍuru majālisa 'n-naẓari fī 'l-juma'). Abu 'l-Hasan b. az-Zaghuni (d.527/1132) had a halqa in the Mosque of al-Mansur in which he conducted disputations on Friday before the Congregational Prayer (yunāẓiru fī-hā yauma 'l-jumu'ati qabla 'ṣ-ṣalāh), and deliver academic sermons after it (thumma ya'iẓu fī-hā ba'da 'ṣ-ṣalāh). He did the same on Saturdays.[59] The Sharif Abu Ja'far used to conduct disputations on Mondays, which were attended by jurisconsults of other schools of law besides his own Hanbali school.[60]

4. The Long Years of Study

Studies lasted many years. Besides the four years of the basic undergraduate law course, there were no fixed periods for any of the fields of study. Between one student and another, the length of time required before receiving a licence to teach could vary considerably. Some examples follow.

Ibn Wahb (d.197/813), a leading scholar of his day, was a fellow of Malik b. Anas for twenty years. He had joined him in the year 148/765 and stayed with him as his fellow until Malik died (d.179/795).[61]

The grammarian 'Ali b. 'Isa ar-Raba'i (d.410/1019),[62] author of a highly praised *Commentary* on the *Kitāb al-Idāḥ* of Abu 'Ali al-Farisi, had worked first under the direction of the grammarian as-Sirafi in Baghdad before going to Shiraz. There he studied under the direction

of Abu 'Ali al-Farisi for twenty years before returning to Baghdad.

The Sharif Abu Ja'far, first cousin of the Abbasid caliph al-Qa'im, studied fiqh under the direction of Qadi Abu Ya'la from the year 428 to 451, becoming in the meantime his repetitor, while continuing his apprenticeship as his fellow during a period of twenty-three years.[63]

Ibn 'Aqil studied fiqh under Qadi Abu Ya'la from the year 447 H., and continued to attend his classes and sessions, and to be one of his fellows, until the qadi died in 458 H. He also studied disputation under several masters, especially Abu 't-Taiyib at-Tabari and Abu Ishaq ash-Shirazi. Tabari retired from active teaching of law and disputation in 430 H., asking Shirazi to teach in his place. Ibn 'Aqil was Tabari's fellow until the latter's death in 450/1058, then that of Shirazi until the latter's death in 476/1083.[64]

Sahl b. Ahmad al-Arghiyani (d.490/1096) first studied fiqh in Marw, then went to Marwarrudh and studied under the direction of Qadi Abu 'Ali al-Husain b. Muhammad (d.462/1070), until he had finished his course and graduated in law; then he went to Tus and studied kalam under Shahfur al-Isfara'ini (d.471/1079), and did his specialist graduate work under Imam al-Haramain al-Juwaini (d.478/1085). He then went on pilgrimage to Mecca and studied traditions under the Shaikhs of Iraq, Hijaz and al-Jibal. On returning from Mecca, he visited a Sufi shaikh who advised him to forsake disputation and the study of khilaf, which he did. He also gave up a qadiship, removed himself from active participation in worldly affairs, and built a monastery in an-Nasibiya for sufi-faqihs from his own wealth.[65]

As there was no set time for admission to college as a fellow, there seems to have been no set age at which the student began his studies beyond the elementary level. The Kufi grammarian Tha'lab was reported as saying that he began to study 'arabiya and lexicography in the year 216/831, that is, at sixteen years of age, then went on, at the age of eighteen, to study the *Ḥudūd*, (Definitions) of the grammarian al-Farra'. 'By the time I reached the age of twenty-five', he said, 'there was not a single question in al-Farra' but that I had mastered it.'[66] Elsewhere, he was cited as saying that he was born in the year 200/816, adding that it was the second year of the caliphate of al-Ma'mun.[67]

The tradition-expert and jurisconsult Abu Bakr al-Khatib, biographer of hadith scholars in Baghdad, up to the year of his death in 463/1071, was encouraged by his father to concentrate early on hadith, at the age of eleven. When he was twenty years of age, he began to teach it.[68]

Abu 't-Taiyib at-Tabari began his legal studies at the age of fourteen and was said not to have failed a single day to pursue the study of law until he died at the age of one hundred and two, in 450/1058.[69]

One of the professors of Ibn al-Jauzi, Abu 'Abd Allah as-Sijzi al-Harawi (d.553 / 1158), was still a child when his father started him on the study of hadith, carrying him on his shoulder from Herat to Busanj (a day's journey)[70] to have him learn, among other collections of hadith, the *Ṣaḥīḥ* of Bukhari (d.256 / 870) of which he later became the transmitter.[71]

Some studied for long periods under several professors. Ibn al-Banna' studied law under Abu Tahir b. al-Ghubari (d.432 / 1041), Abu 'Ali b. Abi Musa (d.428 / 1037), the two brothers Abu 'l-Fadl (d.410 / 1019) and Abu 'l-Faraj at-Tamimi (d.425 / 1034), as well as Abu Ya'la, under whom he wrote the ta'liqa on madhhab- and khilaf-law. He taught law in the quarter of the caliphal palace during the lifetime of Abu Ya'la and after his death in 458 / 1066.[72]

The Shafi'i jurisconsult Abu Ishaq ash-Shirazi began his legal studies at the age of fourteen or fifteen in 410 / 1019.[73] After beginning these studies in Fars and Basra, he came to Baghdad and studied further under the direction of Abu 'Ali at-Tabari. He began to assist Tabari as repetitor in 430 / 1039, then succeeded him as professor of law in his masjid. In 459 / 1067, he began teaching in the Madrasa Nizamiya as its first professor appointed by its founder, Nizam al-Mulk. He is said to have taught law for over thirty years, therefore, since before 446 / 1054, and to have issued legal opinions for nearly fifty years, since about the year 426 / 1035.[74]

Ibn Akhi 'l-'Aziz left his home in Isfahan in 539 / 1144, at the age of twenty, to study law at the Nizamiya. He was admitted to the College as a fellow of its professor Ibn ar-Razzaz (d.572 / 1177).[75] At the age of twenty, this student had finished his undergraduate legal studies.

There are indications in the biographical literature regarding the length of the period required for the basic law course. Abu 'Ali al-Fariqi said that Shirazi taught his law course in a period of four years.[76]

'Abd al-Ghafir al-Farisi, author of the *Siyāq li-Tārīkh Nīsābūr*, studied under his two maternal uncles, among others, learning under one of them 'the first quarter of fiqh in Shafi'i madhhab-law and in khilaf-law' (ar-rub' al-auwal min al-fiqh madhhaban wa-khilāfan). He also studied some of the method of khilaf-law of al-Husain al-Mawarrudhi from 'Abd ar-Razzaq al-Mani'i; then went on to serve Imam al-Haramain al-Juwaini for four years during which he did the ta'liqa on madhhab- and khilaf-law.[77] There are other instances in biographical notices where the biographer is said to have learned 'the first quarter' of the law. Thus the whole syllabus of the basic course was divided into four parts and taught in a period of four years. In the case of 'Abd al-Ghafir al-Farisi, the 'first quarter of law' was repeated under Imam al-Haramain with whom he studied the whole syllabus.

III. THE METHODOLOGY OF LEARNING

I. Memory and its Aids

a. Memorization

The development of the memory is a constant feature of medieval education in Islam. Anecdotes abound regarding those who possessed prodigious memories. Such persons were referred to in the biographical works as 'oceans' (bahr) of learning, 'receptacles' (wi'a', pl. au'iya) of knowledge. Zuhri is quoted as saying that he lived early enough to see four 'oceans' of learning, among whom he cited 'Ubaid Allah al-Hudhali (d.102/721), one of the ancient 'Seven Jurisconsults'. He said he thought that he had 'heard' enough religious knowledge to be satisfied he had done it all, 'until I met 'Ubaid Allah, when I felt that what I had was practically nothing at all' next to 'Ubaid Allah's knowledge.[78]

Harun ar-Rashid had with him in Raiy two scholars, Shaibani, the Hanafi jurisconsult, and Kisa'i, the grammarian. When they died in 189/805, the caliph was reported saying: 'I buried jurisprudence and the Arabic language arts in Raiy.'[79]

The practice of naming the great scholars and their successors was a way of keeping tabs on those who were the receptacles of knowledge and their successors; as, for instance, the long line of such 'oceans' of learning as cited by 'Ali b. al-Madini for Basra, Kufa, Hijaz, and Syria, beginning with Yahya b. Abi Kuthaiyir (d.129/747) and ending with Yahya b. Ma'in (d.233/848).[80] One travelled to obtain this knowledge by following the men who had it, as did al-Laithi (d.234/849) who spread the Maliki system of law in al-Andalus. At the age of twenty-eight, he had travelled to the East in order to gather his knowledge from the greats of his time.[81] Ibn al-Qurriya (d.84/704) was considered among the greatest orators celebrated for their eloquence in classical Arabic. He learned it entirely by heart through oral instruction, for he could neither read nor write, technically an illiterate.[82]

Others who had lost their sight, had no choice but to learn by heart. Such was the case with Abu 'l-Hasan at-Tamimi (d.306/918),[83] a jurisconsult who studied Shafi'i fiqh under the direction of the immediate disciples of Ash'ari and the following generation. It was he who defended the study of fiqh, then a new method going beyond the techniques of rote memory associated with hadith, to that of analysis and understanding (fiqh, originally, meant understanding). He wrote the following lines of poetry in defence of this method, tafaqquh, which took on special significance since he himself was blind:

Abā 't-tafaqquha qaumun lā 'uqūla lahum;
  wa-mā 'alainā, idhā abauhū, min ḍarari.
Mā ḍarra shamsa 'd-ḍuḥā, wa 'sh-shamsu ṭāli'atun,

an lā yarā ḍau'ahā man laisa dhū baṣari.

(Some mindless men have censured fiqh learning; / But there's no harm to us from their disdaining. / The morning sun that's shining does not mind / The fact its light is not seen by the blind.)[84]

Abu 'Amr b. al-'Ala' (d.151, or 159 / 768, or 776), one of the seven Koranic scholars whose variant readings of the Koran are authoritative, was quoted as saying that he knew more grammar than the grammarian al-A'mash (d.148 / 765), and if his knowledge were committed to paper, al-A'mash would be incapable of lifting it.[85] The poet al-Mutanabbi, as a youth, won a thirty-folio book by al-Asma'i (d.216 / 831), claiming that he could memorize its contents after a single reading; which he then proceeded to prove.[86] Al-Mu'afa b. Zakariya' (d.390 / 1000), a jurisconsult of the Jariri madhab, demonstrated his ability to discuss the contents of any book taken at random off the shelves of a wealthy patron's library.[87] Abu Bakr b. al-Anbari (d.328 / 940) was said by many never to have dictated from a book or from notes, but always from memory.[88] Badi' az-Zaman al-Hamadhani (d.398 / 1007) was said to be capable of repeating an ode of over fifty verses from beginning to end after a single hearing. He would also read four or five folios of a work of which he had no previous knowledge, then recite the contents verbatim from memory.[89]

The famous Ghazzali was reported as having been robbed of his books while travelling, and when he called out to the robber to take all his possessions but to leave him his books, the robber's retort was still ringing in his ears long after the event: How can you claim the knowledge of their contents when by dispossessing you of them we dispossessed you of their contents and deprived you of their knowledge? Ghazzali was said to have taken the event as a warning from God and, arriving in his native Tus, he applied himself for three years memorizing the notes he had collected so that he would never again fear being despoiled of his books.[90] Extraordinary feats of memory were performed by the great masters of hadith such as Bukhari, Muslim, Ahmad b. Hanbal and others. The traditions they memorized along with the chains of transmitters were said to have run into the hundreds of thousands.

Some jurisconsults are said to have committed to memory the principles of a particular school of law. Such was the case, for instance, with Abu 'l-Mahasin ar-Ruyani (d.502 / 1108) who said: 'If the works of ash-Shafi'i were to be destroyed by fire, I would be able to dictate their contents from memory'.[91]

Abu Hanifa, the Younger (d.512 / 1118), of Bukhara, was known to be a veritable depository of hadiths. When a student of law referred to him, he was able to quote hadiths in support of any aspect of the law without referring to any book whatsoever. When jurisconsults

came across a difficulty in hadiths, they also would refer to him and base their opinions on what he said. Hadiths of high trustworthiness were transmitted orally through him alone, in his day, so great was the power of his memory.[92] Ibn at-Tabban (d.544/1150), a law student of Ibn ʿAqil, used to carry on disputations, issue fatwas and teach law, all from memory, although technically, he was an illiterate.[93] The jurisconsult Ibn al-Muna (d.583/1187) went blind at the age of forty and was hard of hearing; he did all his teaching to graduate law students from memory.[94] Az-Zahir (d.598/1202) committed to memory an entire work in each of the following fields of knowledge: Koranic exegesis, Shafiʿi fiqh, Hanafi fiqh, hadith, kalam, lexicography, and 'he used to recite them as easily as the Koranic reciter recites his Fatiha'.[95] Of the famous Ibn Taimiya, adh-Dhahabi (d.748/1347) said: 'I have not seen anyone faster than he when it came to retrieving from memory Koranic verses in support of an objection he has cited, nor more capable in calling to mind scriptural texts, citing chapter and verse. Indeed, it is as though the whole corpus of the Sunna was right before his eyes, and on the tip of his tongue . . .'.[96] Badr ad-Din b. ash-Sharishi (d.770/1368) was able to cite from memory the whole of Zamakhshari's (d.538/1144) work on rare hadiths, *al-Fāʾiq*.[97] The Maliki jurisconsult al-Haruni (d.776/1375) was said to have been skilled in the knowledge of the law of his madhab, and that he was able to call to mind a great amount of material.[98] Shihab ad-Din al-Fuqaʿi (d.809/1406) was said to have been able to retrieve from memory the writings of al-Buwaiti, a famous jurisconsult disciple of Shafiʿi, and did it so well that he was dubbed 'al-Buwaiti'.[99]

Those who did not have a well-stocked memory were often pointed out. Speaking of al-Ghaznawi (d.551/1156), a biographer says, 'His memorized repertory was meager, thus he repeated the little that he had memorized'.[100] Subki criticized professors who repeated the same small baggage of memorized materials.[101]

Some students who tried hard, went as far as graduate work, then gave up. Such was the case with Abu Hafs ʿUmar b. Hudba (d.571/1175). In his youth, he studied law under al-Kalwadhani, then he quit while doing graduate studies, and went into business, becoming a broker in the caliph's caravanserai. His biographer Ibn an-Najjar said of him that 'he had not understood a thing!'[102]

The following verse, attributed to Ibn an-Najjar (d.643/1245), illustrates the value placed on memory:

Idhā lam takun ḥāfiẓan wāʿiyan,
  fa-jamʿuka li ʾl-kutubi lā yanfaʿu!
A-tanṭuqu bi ʾl-jahli fī majlisin,
  wa-ʿilmuka fī ʾl-baiti mustaudaʿu?

(If retentive memory's not what you possess, /Your collecting

of books is quite useless! / Would you dare, in company, nonsense say, / When your learning at home is stored away?)[103]

Al-Khatib al-Baghdadi advised the student beginning his legal studies to take in the classroom a position from which he can hear the professor, to be silent and to listen carefully to the lecture. For, according to Abu 'Amr b. al-'Ala', the first rule of learning is silence; the second, good questioning; the third, good listening; the fourth, good memorizing; and the fifth, propagating the knowledge acquired among those seeking it. After coming to class regularly, listening to the lecture and becoming familiar with the subject, the student should ask the professor of law to dictate a portion to him from the beginning of the textbook; then he should take what was dictated and read it to see if he understands it. He should then seclude himself and study it until he has learned it by heart, repeating the lesson until it has firmed itself in his memory. On his next visit to the class he should ask the professor to hear him repeat it from memory. Then he should ask the professor to dictate another portion to him from where he left off, and repeat the process.[104] The student should not take on more than he can handle, but rather go about his learning in this manner, little by little, in accordance with his capacity for learning. He should constantly go over what he has memorized, keeping it all fresh in his mind.[105]

The best time for memorizing one's lesson is early at dawn; and the best of places are second-storey rooms rather than the ground floor, or any place far from distraction. It is not advisable to study in places of vegetation, nor on river banks, nor on the highways, for in these places something is always taking place that is bound to distract his attention.[106] Furthermore, it is best to study on an empty, rather than a full stomach; but extreme hunger should be avoided as an impediment to study.[107] One must also manage one's diet, avoiding heavy foods.[108]

Baghdadi, who cautioned the student not to overload his memory with more than it could assimilate, explained that the heart (seat of the mind) is a member of the body, and like any other member, has its limits. Just as too much food can upset the stomach and weaken the body, so also the mind can suffer from a surfeit of materials to assimilate. Every now and then one must give one's mind a rest so that the work of assimilation may be accomplished, and the mind allowed to relax in preparation for a fresh effort.[109]

b. Repetition

Repetition was favoured as the best way to commit texts to memory. Many were the intellectuals who, in recalling their student years, told of the number of repetitons they made for each lesson.

The jurisconsult Shirazi said that he used to repeat each lesson of fiqh (dars) a hundred times in order to make certain that he had embedded it in his mind.[110] Ghazzali's classmate, and later ambas-

sador of Barkiyaruq to Baghdad, al-Kiya al-Harrasi, used to repeat his lesson on the stairs of the Madrasa Nizamiya, once for each of the seventy steps of the College's flight of stairs.[111] The statement gives some idea of the great College's size. Abu 'l-Mafakhir b. Abi Bakr (d.545/1150), a jurisconsult and man of letters, used to say that 'if you do not repeat a thing fifty times, it will not be firmly embedded in your mind'.[112] The Hanafi jurisconsult and chief qadi Abu 'Abd Allah ad-Damaghani reminisced that as a law student, he used to read his epitomes of law and would not stop repeating the process until he had learned them by heart.[113] Ghazzali's episode with the highway robber, mentioned above, decided him to set aside three years to commit to memory all the notes he had taken from his professor's lectures and from books.[114]

Repetition was so essential to the system that the master-jurisconsult of a college of law usually had a mu'id, literally a repetitor. Some colleges had more than one on their staff.

c. Understanding

Memorization, not meant to be unreasoning rote learning, was reinforced with intelligence and understanding. Thus, a distinction was made between those who could merely reproduce a text, and those who also understood it. In his work, *Marātib al-'ulamā'*, which was a prolegomena to his other work, *Basīṭ al-qaul fī aḥkām sharā'i' al-Islām*, the celebrated historian Tabari (d.310/923) made a strong plea for the acquisition of religious knowledge and its understanding (tafaqquh), and censured those of his fellows who limited themselves to transcribing or note-taking without troubling with studying and understanding what they had written.[115] Zamakhshari puts it succinctly in this statement: 'Learning is a city, one of whose gates is understanding, and the other, retrieval from memory' (al-'ilmu madīnatun aḥadu bābaihā 'd-dirāya, wa 'th-thānī 'r-riwāya).[116]

The Muslim theorists of education seldom fail to advise the student to learn his textbook by heart. The advice of 'Abd al-Latif al-Baghdadi, already cited, was typical: 'When you read a book make every effort to learn it by heart and master its meaning. Imagine the book to have disappeared and that you can dispense with it, unaffected by its loss.'[117]

d. Mudhakara

That memory was highly cultivated may further be seen in the meaning given to the term mudhakara. Lane gives its primary meaning as one person calling to mind with another person a story, or discourse, or the like. Dozy gives the meaning of speaking of something with another. He gives also other meanings, such as, when speaking of a professor and his disciple, dhākarahu (third form) would mean that the professor posed a question to his disciple. When speaking of learned men or men of letters, this verb means to confer, to reason on

some point of doctrine, to dispute, to argue for or against a given subject. And finally, it may mean to recite verses to someone, or to relate stories or anecdotes to him.[118] But the original, basic meaning of the word is the reciprocal action of aiding one another to memorize, to commit to memory.

These meanings by extension are borne out by the actual texts; as, for instance, in Yaqut,[119] where the sixth form of the verb, with the function of reciprocity, tadhākarā, signifies a contest in which two poets competed in calling to mind the odes of pre-Islamic poetry, one of them doing so with more than one hundred odes.[120]

In one instance, the mudhakara had for its object the field of hadith with the contestants vying with one another to see who had the greater memory, who could cite hadiths unknown to the other.[121] In another instance,[122] a mudhakara is cited between the muhaddith Ahmad b. Ishaq b. Bahlul (d.318/930) and the historian and muhaddith Tabari. Another muhaddith conducted a mudhakara on rare hadiths.[123]

In quoting an autobiographical note of Ishaq b. Rahawaih, Ibn Khallikan cites him as saying: 'I know by heart (aḥfaẓu) seventy thousand hadiths, but my repertory for mudhakara is one hundred thousand hadiths',[124] the term mudhakara thus including passive memory.

Al-Khatib Baghdadi's advice to students was that after attending class, they should repeat to each other what they learned and quiz each other on it.[125] Once the lesson has been learned by heart, the student should write it down from memory.[126] The written record of the lesson should serve as a reference when the memory of it fails him. Constantly recalling a lesson and quizzing one another firms up the memory. Mudhakara should be constantly practised so as to avoid the loss of what one has learned; and the best time for it is at night. He quoted a learned man saying, 'The only thing that does away with knowledge is forgetfulness and forsaking mudhakara'.[127]

e. The Notebook

Committing materials to writing was recognized as most important in the process of learning. Memory alone was not to be trusted. Recording was also to be done from 'the mouths of professors' and from their works, and when the work was considered important, it was copied whole. Muhammad b. Muslim b. Wara (d.265/879), upon his arrival in Baghdad from Cairo, went to pay a visit to Ahmad b. Hanbal who asked him: 'Did you copy the books of Shafiʿi?' Ibn Wara answered, 'No'. Whereupon Ibn Hanbal admonished him, saying: 'You were remiss. We did not come to know the difference between the general (ʿumum) and the particular (khusus) statements in scripture, nor between abrogating (nasikh) and abrogated (mansukh) hadiths until we had attended the lessons (and taken

down the dictation) of Shafi'i'. Upon hearing this, Ibn Wara turned back to Cairo and copied the works of Shafi'i.[128]

Putting pen to paper was important in spite of the emphasis placed on stocking the memory. Books were indispensable because one had to refresh one's memory in order to keep intact what had been handed down. Al-Bukhari, the great muhaddith and compiler of one of the two most important codifications of hadiths, once said of 'Ikrima b. 'Ammar al-Yamani (d.107 / 725) that his hadiths were weak because he had not committed them to writing.[129]

Nasir b. Ahmad at-Tusi (d.468 / 1075) was said to have studied the works of Abu 'l-Qasim al-Qushairi, and then copied them.[130] Haskani said that he met the Sufi Nasr b. 'Alī al-Qazwini in 423 / 1032 on the road to Mecca to perform the pilgrimage, who then dictated a hadith to him from memory which Haskani committed to writing.[131]

Abu Sa'id as-Sirafi was asked whether Ibn Duraid dictated from memory. He answered: 'No, the hadiths were compiled from his and other works, then were read under his direction'. 'Ubaid Allah Muhammad b. 'Umran al-Marzubani (d.384 / 994) was then asked the same question; and he answered that Ibn Duraid 'did not dictate hadiths from a book nor from memory; rather, he used to write them down, then hand them over to us in his own handwriting; and when we had copied them, he would tear up his copy.[132] The anecdote emphasizes both the need for the written record as well as the need to memorize.

2. The Scholastic Method: Origins and Development

a. The Attraction of Dialectic

Manuals on Islamic religious and cultural history tell of the ideological antagonism between Christian and Muslim theologians, indicating this to be the reason for the interest manifested by Muslims for the polemical tools used by the Christians. A natural reaction to this antagonism was the adoption of the enemy's weapons in order the better to oppose him. More significant for Islam, however, was the ideological clash within Islam itself. The line of authoritative transmission of religious knowledge lay in Islam; there was little concern that Muslims would convert to Christianity. Indeed, the trend was the other way around. Christianity did not present a threat to that line of authority. Christians and Jews, the People of the Book (Ahl al-Kitab), were outside the pale; so also were Muslims recognized as heretics. But Muslims believed to be parading as believers were those considered to present the greatest threat to orthodoxy. The struggle was within Islam itself to establish the lines of authority, as evidenced by the Inquisition under al-Ma'mun.

Interest in the logical works had deeper roots within Islam, aside from ideological differences. It sprang from an inner need of this

nomocratic society whose criterion for orthodoxy rested on the principle of consensus, a consensus that had no formal organization to determine it. Unlike Christianity, Islam has neither councils nor synods to determine orthodoxy. It has no clergy, no body of ecclesiastics convened to consider matters of doctrine, discipline, law or morals. The bounds of orthodoxy are determined on the basis of the consensus of doctors of the law. Since there is no body of determinate character which could be convened for the purpose of polling the consensus, this principle operates negatively and retroactively. For this reason, consensus, ijmaʿ, is determined, not by the yeas against the nays, for no clear count could actually be taken, but rather by whether voices of authoritative doctors of the law have been raised in the past *against* a particular doctrine. If not, then the doctrine was considered to have been accepted as orthodox. Thus, consensus was achieved in three ways: (1) by word (qaul), (2) by deed (fiʿl), and (3) by tacit acceptance (taqrir). The Muslim principle, al-amr bi ʾl-maʿrūf wa ʾn-nahy ʿan al-munkar, ordering the good and prohibiting evil, commanded the ulama to speak up. It was, therefore, incumbent upon a doctor of the law who opposed a given doctrine to raise his voice against it, lest he be considered to have accepted it tacitly. Silence had positive value; the system had no place for abstentions. The ulama, willy-nilly, were committed.

Ijmaʿ, consensus, had its counterpart in khilaf, disagreement, difference of opinion. This situation gave rise, very early in Islam, to the need for codifying all opinion on which there was disagreement among the authoritative doctors. Here is a central fact of Islamic religious history: the antithesis of ijmaʿ-khilaf, consensus-disagreement, sic et non.

b. Consensus vs. Caliphal Enactment of Decisions

As the Islamic empire expanded, and with the expansion came the inevitable divergence in practice and doctrine, there soon arose an awareness of the need to seek consensus among those who were responsible for the law and its development.

Ibn al-Muqaffaʿ (d. 142/759), in his treatise on the *Ṣaḥāba*, points out the wide divergences in jurisprudence and in the administration of justice existing in the great cities and in the various schools of law, the Iraqians, the Hijazis, and others. He proposed that the caliph should review the different doctrines with their reasons, then codify and enact his decisions in the interest of uniformity.[133]

There was no sequel to Ibn al-Muqaffaʿʾs advice. Islam had already opted for the principle of ijmaʿ. The Umaiyad caliph ʿUmar b. ʿAbd al-ʿAziz[134] had sent letters to the provinces ordering that each region should decide according to the consensus of its doctors of the law.[135]

c. The Antithesis of Ijma'-Khilaf

1) The *Topics* of Aristotle

In order to arrive at consensus on any doctrine or practice, disagreement had to be dealt with and resolved. The method of reaching solutions was to be found in some aspects of the logical works of Aristotle, specifically the *Topics*.

Three stages may be seen in the development of this interest: (1) the translation movement of the philosopher-physicians; (2) the movement leading up to the Inquisition brought on by the philosophical theologians; and (3) the movement which led to the development of the four personal schools of law and their crystallization after the Inquisition.

In the second half of the third / ninth century, all the logical works which formed the basis of dialectic and the further development of disputation had already been translated into Arabic, studied, and digested: both *Analytics*, the *Topics*, and the *Sophistical Refutations* of Aristotle. The science of dialectic was first taken up by the philosophers. The philosopher al-Farabi (d.339 / 950) wrote a commentary on Books II and III, and a work on Book VIII, of the *Topics*, especially important for the development of the art of disputation, treating the manner in which questions should be asked and how answers should be given in a disputation.

The mutakallimun, philosophical theologians, followed suit. But the scholastic method, and all the training that it entailed, was not the final product of the philosophers, nor of the philosophical theologians: it was that of the jurisconsults. The institutions of higher learning, the schools that produced the scholastic method, namely, the madrasa and before it, the masjid-khan complex, were institutions devoted to legal studies, exclusive of philosophy (falsafa) and philosophical theology (kalam).

2) Ijma' and the Chain of Authority

In the introduction to his *Ṭabaqāt al-fuqahā'*, a biographical work on the *Classes of Jurisconsults* up to his time, Abu Ishaq ash-Shirazi, the leading Shafi'i jurisconsult of his day, said that his work was a compendium (mukhtasar) in which he treated of jurisconsults and their followers. He described it as 'a work which the jurisconsult cannot afford to ignore *because of his need to know those whose opinions are considered authoritative in arriving at consensus and whose disagreements are to be taken into account*', and therefore were to be considered as an impediment to the constitution of consensus (lā yasa'u 'l-faqīha jahluhū li-ḥājatihī ilaihī fī ma'rifati man yu'tabaru qauluhū fī 'n'iqādi 'l-ijmā', wa-yu'taddu fī 'l-khilāf).[136]

The implication in Shirazi's statement is that not all who claimed to be jurisconsults were to be included among the authoritative doctors of the law: authoritative in the sense that their voices were to

be taken into consideration when constituting, or impeding the constitution of, consensus. Shirazi did not mention here the qualifications of an authoritative jurisconsult; but it is sufficiently clear in his work that authority devolved upon those jurisconsults who were in the line of descendance from the Prophet and his Companions, from whom the transmission of canonical knowledge took place in succession, passing from one class of jurisconsults to another.

The terminology used by Shirazi is indicative of this transmission of authority: 'A group of jurisconsults learned fiqh on the authority of Ibn 'Abbas [d.68/687], among them the following . . .' (akhadha 'l-fiqha 'an Ibn 'Abbās jamā'atun, fa-minhum . . .);[137] 'Then fiqh was transmitted to another class, among them the following . . .' (thumma 'ntaqala 'l-fiqhu ilā ṭabaqatin ukhrā, minhum . . .).[138] After treating of the jurisconsults of Baghdad and Khurasan, he said: 'Then, in all those countries that came under the sway of Islam, jurisprudence wound up with the followers of Shafi'i, Abu Hanifa, Malik, Ahmad [b. Hanbal] and Dawud [az-Zahiri]'. Thus the authoritative transmission of jurisprudential knowledge was accomplished in succession from the Prophet and his Companions, from one authoritative jurisconsult to another, from one class to another, on down the line.[139]

3) Legal Dialectic: Forensic

By the first half of the fourth/tenth century, the jurisconsults became interested in the study of dialectic, adapting it to their own purposes; that is, to the perfection of the art of disputation. Al-Qaffal ash-Shashi (d.365/976) was the author of a work on dialectic, considered by the jurisconsults as 'legitimate' (al-jadal al-hasan). Shirazi[140] said of him: 'He is the first jurisconsult to compose a work on the good [legitimate] dialectic' (huwa auwalu man ṣannafa 'l-jadala 'l-ḥasana mina 'l-fuqahā').[141] The statement implied that there were others, placed at the service of rationalistic thought, philosophy, and philosophical theology.

The Shafi'i jurisconsult Abu 'Ali at-Tabari (d.350/961) wrote two such works: *al-Muḥarrar fī 'n-naẓar*, and *al-Jadal*. Shirazi described the former as 'the first book composed on pure khilaf' (huwa auwalu kitābin ṣunnifa fī 'l-khilāfi 'l-mujarrad).[142] Basing himself on Shirazi, Ibn Kathir said that its author was the first jurisconsult to disengage, or isolate (jarrada) the subject of khilaf, devoting his attention to it, and composing a work on it.[143] Notice that the title carries the term nazar (disputation), and that the book is described as being on 'pure khilaf', divested (mujarrad) of its relation to any legal opinions in particular. The work appears to have been on disputation; whereas the second work, *al-Jadal*, was on dialectic. Another jurisconsult, the Hanafi Abu Zaid ad-Dabusi (d.430/1039) was said to have been the first to establish the science of khilaf and to bring it into existence.[144]

4) Technical Terms

Dabusi was said to have a method of his own in khilaf.[145] The difference between him and Tabari might have been that each had established the science of khilaf according to a method of his own, new in itself. The author of *al-Jawāhir* cites ar-Radi an-Nisaburi (d.544/1149) as one who established yet another method of khilaf, known by his name as 'ar-Radawiya', in three volumes. One of this jurisconsult's disciples was Abu 'l-Fadl at-Tawusi, author of yet another method; his honorific title was Munshi' an-Nazar, 'Creator of Disputation'. Another disciple was Rukn ad-Din al-'Amidi (d.615/1218), whom Ibn Khaldun (d.808/1406) cited in his *Muqaddima* as the author of a method on jadal, dialectic.[146]

Notice here the confusion of terms: jadal (dialectic), khilaf (divergence of opinion, disagreement, in the law), nazar and munazara (disputation), all four terms having to do with the scholastic method. It was a *method* taught in the colleges of law, drummed into the students, rehearsed over and over again, the method of teaching it being part and parcel of the method of teaching the legal sciences, namely, tadris.

The reason for the confusion of the terms derives from the meaning of khilaf. This term was opposed to the term madhhab. Both terms dealt chiefly with law. Madhhab referred to those doctrines regarding which there were no differences of opinion. Used with a complement, for instance, the madhhab of a particular school of jurisprudence, it meant those doctrines having the consensus of that school's doctors. Used absolutely, it could be considered synonymous with ijma', consensus. Khilaf, on the other hand, referred to differences of opinion among the doctors of the law, whether of one school, or of all schools of jurisprudence. The antithesis of ijma'-khilaf is also found in madhhab-khilaf. Khilaf had to do with disputed questions of law; the disputed questions were al-masa'il al-khilafiya. To deal with khilaf, one had to be skilled in jadal, dialectic, and in munazara, nazar, disputation. Soon these terms became identified with one another through association, and were often used interchangeably.

5) Disputation at the Core of Legal Studies

After the first works on dialectic had adapted it to the needs of legal studies, jurisconsults, becoming fully cognizant of its value to their work, began to study it in earnest. They devoted individual works to it; and, more significantly, they incorporated the subject, in more or less detail, in their works on legal theory and methodology. A fine example of this practice is found in a fifth/eleventh-century work within a work – a whole book on dialectic that Ibn 'Aqil includes in his monumental summa juridica entitled *al-Wāḍiḥ fī uṣūl al-fiqh, The Clear Book on the Theory and Methodology of the Law.*[147]

So important was dialectic for the development of law and legal studies in Islam that it became a sine qua non of these studies in the

colleges of law, both masjids and madrasas. This great interest in the study and cultivation of dialectic as a strengthening agent for the practice of disputation is clear to see in the career of the law student. In his undergraduate period, normally four years, he applied himself to the learning of the law in its positive aspects. He began his study of disputation sometime before this period was over. And once he became a graduate student, that is, a sahib, fellow, of the professor, he began to practice disputation in earnest. The aim was to excel in the knowledge of the law, to a degree enabling him to issue solicited legal opinions, and be ready to defend these opinions against jurisconsults who held opinions to the contrary.

The technical terms for disputation were distinct, though often used interchangeably. Ibn 'Aqil makes a clear distinction between the object of jadal, and the object of nazar. In jadal, one advocate attempts to cause the other to shift from one thesis to another – or, according to others, from one thesis to any other – by way of argumentation. On the other hand, the object of the practitioner of nazar is to attain the truth; that of jadal being to cause the adversary to shift from falsehood to truth, from what is wrong to what is right. In other words, the practitioner of nazar does not claim to know the truth and is seeking it; the practitioner of jadal (and hence, khilaf and munazara), acting from conviction that he knows the truth, employs the method of dialectic to convince his opponent, causing him to shift from his own thesis to that of his adversary.[148]

The terms nazar and munazara, though often used interchangeably, are etymologically distinct. The signification of nazar, form I of the root *nẓr*, does not involve a second party; whereas munazara, form III, involves the notion of reciprocity. Hence the more frequent use of the term munazara in the sense of disputation. Originally the term munazara was synonymous with such terms as munaqasha (argument), munaza'a (struggle), and muhawara (dialogue). But with the development of dialectic it came to be used scholastically in the sense of disputation. Compare, for instance, the passage in Yaqut: wa-kāna bainahū wa-baina Abī 'l-'Alā' shaḥnā'u wa-munāẓarāt (there was between him and Abu 'l-'Ala' hatred and quarrelling).[149] The term munazara, in ordinary language, had the meanings of confrontation,[150] altercation[151] and consultation.[152]

Hajji Khalifa identified 'ilm al-khilaf, the science of differences of opinion, of controversy, with jadal, dialectic, which was itself a part of mantiq, logic, adding: 'except that this science (jadal) is applied particularly to religious matters', – religious, as distinct from 'foreign sciences'.[153]

The terminology of the scholastic method was, for the most part, associated with law and legal studies. Khilaf, from khālafa, to deviate from a given course, was opposed to madhhab, as already indicated.

Madhhab was used to designate a certain orientation, direction, view, doctrine, and as such, was used to designate what has been translated as school of law. Jurisconsults who held the same general doctrines in law were said to follow the same madhhab, the same 'direction'. For madhhab derives from the verb dhahaba, to follow a certain course, and is its infinitive noun meaning a course, a way, a mode, or manner of acting. The phrase dhahaba madhhaban ḥasanan means he pursued a good course; dhahaba madhhaba fulān, he pursued the course of such a one. To follow the madhhab of Shafi'i meant to follow his course, his school of jurisprudence.

In scholastic terminology madhhab came to mean the thesis being upheld, and khilaf came to mean opinions conflicting with the thesis. Biographical notices often refer to the jurisconsult as being learned in madhhab, khilaf and jadal, meaning that he was learned in the doctrines that have been agreed upon (madhhab), in the doctrines on which there were unresolved differences of opinion (khilaf), and in dialectic (jadal) showing that he was versed in that science enabling him to defend his theses.

The starting point in the terminology of scholasticism was the fatwa process. The mustafti requested a fatwa (legal opinion) from the mufti, the request being mas'ala (question), pl. masa'il, and the opinion given, the jawab (answer, response), pl. ajwiba. For the disputation, the su'al or mas'ala became the question, problem, to be solved, as well as the objection to be answered. The sa'il became the questioner, objector, the opponent to the thesis; and the mujib, the answerer, respondent, proponent of the thesis. The taqrir, 'settling' the question, became the determination, solution. When the determination achieved consensus, it became the madhab, the 'way to go', the objections being resolved; failing solution, it remained in the realm of khilaf; whence the term for those questions, problems, still in dispute: al-masa'il al-khilafiya, 'the disputed questions'.

At the turn of the fourth–fifth century (the tenth–eleventh A.D.) disputation, munazara, had already become a highly developed field of legal studies pursued by the student-jurisconsult. To become an accomplished master-jurisconsult one had to become proficient in disputation.

3. The Scholastic Method as Form: The Ta'liqa-Report

a. Advocacy

The technical terms of Islamic medieval education are a convenient guide to the understanding of its method of instruction. Certain terms are cited here for the light they throw on the scholastic method of the colleges of law.

Because of the ijmā'-khilāf antithesis, the thrust of the educational system in the college of law, whether the madrasa or its precursor, the

masjid-khan complex, was directed toward the training of the advocate.

With his preparation in the literary arts completed, the student of law began his specialization in the field of legal studies. To survive through the gruelling initial undergraduate years, and to go on to graduate studies and the final ordeal of defending one's theses, the student, from beginning to end, had to continue to develop a strong memory, learn how to stock it carefully with the necessary stores, and so arrange and classify them there as to be able to retrieve them with the least possible hesitation, drawing upon the memory's treasures at will. For advocacy was a completely oral exercise. There was no time for reference to sources, no time for that deliberation one has when writing, no opportunity to draft and redraft before delivering the final product. All deliberation had to be done beforehand, and the material mastered definitively for instant recall, in preparation for the supreme encounter with the adversary, at which time there would be no margin left for error, no quarter asked and none given. Reputations were made and unmade; careers hung in the balance.

In Medieval Islam, the achievement of consensus (ijmaʿ) was made possible by the absence of disagreement (khilaf). Ijmaʿ was thus arrived at by a system of elimination. Eliminate khilaf and you have ijmaʿ. Those who sought the achievement of consensus had therefore to see to the elimination of disagreement. This was the goal to be achieved; it was to be achieved in one of two ways: by winning the adversary over to one's side, or by reducing him to silence.

The advocate's training thus revolved around khilaf. The object of training was to learn how to meet all possible objections to one's thesis. His training was dominated by two major initial concerns: (1) to commit to memory an ever-growing repertoire of questions still being disputed, and (2) to learn and practise the art of disputation, or argumentation, with special emphasis on how to ask questions and how to answer them. But it was not enough to know all previously known and debated questions and the logical sequence of arguments, counter-arguments, objections and replies to the objections – for this is a repertoire equally available to the adversary for memorization; one had also to know how to innovate: create new questions, develop new arguments, to surprise the adversary and keep him off balance, the more easily to knock him out.

This activity explains why the codification of khilaf, disputed questions, is one of the most prolific genres of Islamic legal literature. It was a repertoire of those questions that remained disputed and on which there was no consensus, a repertoire of questions serving as a reference work for the advocate.

b. Some General Terms

The technical terminology of medieval legal education revolved

mainly around the derivatives of the word for law, fiqh, supplemented by the derivatives of the triliteral root, *drs*, when used in the absolute, without complements, and by other terms combined with derivatives of the roots *fqh* and *drs*: tafaqqaha 'alā, darasa 'alā, darasa 'l-fiqha 'alā, akhadha 'l-fiqha 'an, qara'a 'l-fiqha 'alā, and sami'a 'd-darsa 'alā, for instance, all meant *to study law under the direction of* a master-jurisconsult.

The root *drs* supplied many terms relating to law when the terms were used *without a complement*: dars meant a lesson of law; mudarris, a professor of law; darrasa, to teach law; madrasa, the place where law was taught; tadris, the teaching of law, the legal teaching profession or post, the professorship of law. The term darrasa did not have a synonymous term taken from the term for law, fiqh; in other words, the term faqqaha was not used as a synonym of darrasa. The term faqih, jurisconsult, loosely used, designated any student of law; more specifically, it designated an advanced student of law, or an accomplished jurisconsult. The faqih was not necessarily a professor of law; being a doctor of the law did not guarantee him a teaching post.

Some of the other fields of knowledge had their special terms relating to teaching and learning, and others did not. For instance, in the field of Koranic science, the verb used was a derivative from the same root as the term for the Koran: Qur'an, the Koran, comes from the triliteral root *qr'* as does the verb qara'a, to recite, to read aloud, with Qur'an meaning the Recitation, the Prophet having read aloud, recited, the verses of the Koran as he received them from the Angel Gabriel. The verb qara'a meant primarily to study the Koranic variants, the qira'at; it was also used in the general sense of studying other fields of knowledge, when followed by a complement designating the particular field.[154]

The verb akhadha, to take, to receive, is another such general term which, with the preposition 'an, meant to study under; for instance, akhadha al-adaba 'an, akhadha 'l-falsafata an, akhadha 'ilma 'l-kalami 'an, akhadha 'ilma 'n-naẓari 'an, meant, respectively, to study under (someone) the literary arts, philosophy, philosophical theology, disputation, these subjects not having technical terms for this purpose taken from the same root as the terms for the fields themselves. For adab, there was the verb ta'addaba bi meaning not only to study adab-literature under (someone), but also to finish doing so, to graduate in that field under (someone's) direction. But falsafa, kalam, and nazar or munazara did not have such terms derived from their own roots.

On the other hand, the field of hadith had the verb ḥaddatha, from its own root, signifying to teach hadith, and tahdith, signifying the function or the post of teaching it, the professorship of hadith. The terms haddatha and tahdith, in hadith, were therefore the counter-

parts of darrasa and tadris in fiqh. Fiqh did not use the terms faqqaha and tafqih for the teaching of fiqh, though it did use tafaqqaha to designate the learning of fiqh.

During the undergraduate years, the main thrust of learning was on the legal principles of the school of law to which the student belonged, on madhhab law. During the graduate period, the emphasis was on the disputed questions, on khilaf law.[155] This second period was that of the student's suhba, fellowship, during which he became a sahib, fellow, of the master jurisconsult, a constant companion, a disciple, and was thus said to ṣāhaba (Form III) his professor. A later synonymous verb is lāzama, from which is derived the verbal noun mulazama, synonymous with suhba, the active participle of which, mulazim, was used especially in the Ottoman period signifying the assistant to the professor of law. It was mainly during this period of suhba that the activity of ta'liq took place.

The verb 'allaqa, with the prepositions 'alā or 'an, was said of a student who took notes of the lecture of his master-jurisconsult. The record of his notes was called the ta'liqa, a term which was used also to designate the professor's own lecture notes, his own syllabus for the course he taught. According to the contexts in which it is found, the verb 'allaqa means to record, to note, to take notes, to take minutes, to report.

In biographical notices one often comes across the phrase lahū 'anhū ta'līqa, in reference to a jurisconsult who, as a student, wrote a ta'liqa on the authority of his professor of law, based on the master's lectures or books. The activity of ta'liq was an essential part of the jurisconsult's training. The ta'liqa could also be a work of individual character, bearing the stamp of its originator. One such work could differ widely from another in form and content.

The ta'liqa was a product of either master or advanced student of law. In the case of a master jurisconsult, it could be a set of lecture notes for personal use in teaching his own course, or a finished product that could be used by other professors of law. In the case of the advanced student, it could be the collection of notes taken from the lectures of his master, or from both the master's lectures and works, then studied, memorized and submitted to the master for examination and quizzing with a view to being promoted to the class of ifta'; it could also be the result of further work and composition to be produced as a finished product, the student's first publication. Examples of ta'liqas of masters and disciples are given below. A good example of ta'liqas of advanced students would be Ghazzali's two ta'liqas, one done under Isma'ili and another under Juwaini. The first remained in the form of notes, several notebooks which he almost lost to the brigands while travelling; the second was reworked into a finished product, entitled *al-Mankhūl min 'ilm al-uṣūl*, his first publication.

When a professor was famous for his taʿliqa, the matter was mentioned by the biographers; just as when a student jurisconsult had excelled in the activity of taʿliq, the matter was also made known. The Shafiʿi jurisconsult Ibn Abi Huraira (d.345/956), disciple of Ibn Suraij and Abu Ishaq al-Marwazi (d.340/951), wrote a commentary on the famous *Epitome* of al-Muzani. This commentary was his taʿliqa. His disciple Abu ʿAli at-Tabari produced a famous taʿliqa of his own, based on the lectures of the master: akhadha 'l-fiqha ʿan Abī ʿAlī b. Abī Huraira . . . wa-ʿallaqa ʿanhū 't-taʿlīqata 'l-mashhūrata 'l-mansūbata liaih.[156]

The term used for copying was kataba, to write down word for word. The verb kataba, as a counterpart of ʿallaqa, was used for the corresponding activity in the field of hadith. For instance, al-Astarabadhi (d.335/946-7) was said not to have written down traditions on the authority of ʿAmmar b. Raja' (d.267/881): al-Astarābādhī adraka ʿAmmār b. Rajā' wa-lam yaktub ʿanh.[157] And when Astarabadhi held a session of hadith-dictation in Astarabadh, hadiths were written down on his authority: wa-ʿaqada majlisa 'l-imlā'i bi-Astarābādh wa-kutiba ʿanh.[158]

The difference between the two activities designated by kataba and ʿallaqa was clearly indicated in passages such as the following. Ibn Abi Yaʿla (d.526/1131), in speaking of his father's disciple, Ibn Mahmuya (d.493/1100) said that 'he reported' on a section of madhhab- and khilaf-law, and 'wrote' (=copied) certain passages from his works: ʿallaqa ʿani 'l-wālidi qiṭʿatan mina 'l-madhhabi wa'l-khilāf, wa-kataba ashyā'a min taṣānīfih.[159]

The difference between kataba and ʿallaqa was, therefore, a significant one. Kataba applied to hadiths, and these were noted down verbatim from dictation; ʿallaqa was a note-taking process the results of which depended on the competence of the law student, on the judgment he exercised in his note-taking. For here, in contradistinction to writing from dictation, there was no time to commit to memory every word uttered in the proceedings, whether a disputation in progress, or a lecture in which a professor of law reported an actual disputation orally.

The atmosphere of a classroom on hadith differed dramatically from that of a classroom on law. Hadiths were copied word for word from dictation. The process was tedious and dull. Teachers of hadith were praised in biographical notices for their patience. Notices mention the complaints of teachers regarding the bad behaviour of students in class, talking and distracting other students: no doubt because some took dictation faster than others, and hadith classes were usually much more crowded than law classes.

There were no such complaints by professors of law, nor were they praised for their patience. Controversy, argumentation and debate

have a perpetual appeal to youth. Professors' complaints in this regard were of a different sort. Students had no time to be bored; they were intensely involved in heated debates, or too occupied in making a digest, a report, of an on-going disputation.

c. The Ta'liqa: Disputed Questions and Method

The master-jurisconsults' teaching of disputation was done with more or less originality. There were those among them who developed their own materials, and these were used later in their careers to write a *summa* on legal theory and methodology. At the core of these materials were the masā'il, questions. The best materials consisted not only of a repertoire of known questions, but also of new questions and the method of dealing with them. This included all possible objections to a question together with the replies to the objections.

Biographers often cited the talent of grammarians and jurisconsults for discovering new questions and developing methods for dealing with them. Qifti, for instance, spoke of Abu Talib al-Adami (d. after 450/1058) as dealing with the intricacies of grammar in regular sessions of disputation during which he would originate questions theretofore unknown.[160]

The Hanbali jurisconsult Abu 'l-Wafa' b. al-Qauwas had a halqa in the great Mosque of al-Mansur in Baghdad for issuing legal opinions and conducting sessions of disputation. He taught a course consisting of questions for use in disputations, including the objections and the replies to them.[161]

Whole works were devoted to the literature of masa'il under titles such as the following: *Kitāb al-masā'il; Ru'ūs al-masā'il; Masā'il (So-and-So)*, citing the name of a master jurisconsult or grammarian; *al-Masā'il al-* (followed by the name of a locality);[162] *Masā'il fī 'l-khilāf*, usually on law, but also on grammar, and sometimes on kalam and medicine.[163] Muslim medieval education produced a particular genre of literature, akin to the general works on khilaf, but essentially works destined for the student of law, a genre of scholastic legal literature called the ta'liqa. When the ta'liqa was a professorial work it could also be said to be the professor's method, tariqa. A student was said to have 'reported' the ta'liqa, or tariqa, of his professor meaning that he had noted in writing the disputed questions of his professor's ta'liqa, the method of argumentation used and the solutions given. This can be seen in such statements as the following: ḥaṣṣala tariqatah or allaqa tariqatah (he acquired his method, he noted down his method); mā 'allaqa aḥadun ṭarīqatī mithlah (no one has reported [noted down] my method as well as he); jama'a baina ṭarīqatihī wa-ṭarīqati (fulān) (he combined his method and the method of [So-and-So], that is he mastered the methods of two different professors); and so on.

The tariqa of a professor was his method of dealing with the dis-

puted questions, masa'il, masa'il al-khilaf, al-masa'il al-khilafiya, as well as the repertoire of the questions he treated. The celebrated Shafi'i Fakhr ad-Din ar-Razi wrote *aṭ-Ṭarīqa fī 'l-khilāf wa 'l-jadal* (literally, A Method in Sic-et-Non and Dialectic),[164] elsewhere referred to as *aṭ-Ṭarīqa al-'Alā'īya fī 'l-khilāf*,[165] perhaps dedicated to Khwarizmshah *'Ala'* ad-Din Muhammad (reign: 596-617/1199-1220).[166] 'Abd ar-Rahman b. 'Umar al-Basri (d.684/1285), professor of Hanbali law in Baghdad's Madrasa Mustansiriya, was said to have been the author of a method on khilaf consisting of twenty disputed questions (ṭarīqatun fī 'l-khilāf yaḥtawī 'alā 'ishrīna mas'ala).[167] Abu 'l-Muzaffar as-Sam'ani (d.489/1096), a famous jurisconsult who, after thirty years as a Hanafi, changed over to the Shafi'i madhab, is the author of *al-Burhān fī 'l-khilāf*, said to contain close to one thousand disputed questions (jama'a fīhī qarīban min alfi mas'ălatin khilāfīya).[168] Ibn 'Aqil, who used the method of disputation in writing his *Wāḍiḥ fī uṣūl al-fiqh*, describes his method at the end of the monumental three-volume work which he wrote for the use of beginners:

> In writing this work I followed a method whereby first I presented in logical order the theses [madhhab, pl. madhahib], then the arguments [hujja, pl. hujaj], then the objections [su'al, pl. as'ila], then the replies to the objections [jawab, pl. ajwiba], then the pseudo-arguments (of the opponents for the counter theses) [shubha, pl. shubah, shubuhat], then the replies [in rebuttal of these pseudo-arguments] [jawab, pl. ajwiba] – [all of this] *for the purpose of teaching beginners the method of disputation* [tariqat an-nazar].[169]

Not all professors had a tariqa; not all had a ta'liqa. Those who did not have a method of their own made use of someone else's. Wajih ad-Din b. Nubata (d.before 580/1184) was said to have done the ta'liqa phase of his legal education under a professor who used the ta'liqa of another professor.[170] Ibn Khallikan speaks of the Shafi'i jurisconsult Abu Talib at-Tamimi al-Isfahani (d.585/1189) as having excelled in disputation and authored a famous method (tariqa mashhura) 'which became the object of reliance of professors in their lectures on law' and they considered those professors who did not make use of the method as falling short of the intelligence required in order to make proper use of it.[171] Dhahabi cited the same work as 'a ta'līqa replete with all sorts of knowledge'.[172] Thus ta'liqa and ṭariqa were used synonymously.

The term khilaf included the meaning of content as well as method; it was the repertoire of objections as well as the dialectical method of dealing with them. Jibril b. Sarim was said to have come as a student to Baghdad in 584/1188. His legal education was given as follows in three stages: (1) he first studied madhhab-law (tafaqqaha fī

'l-madhhab); then (2) 'read' khilaf (wa-qara'a 'l-khilaf), that is, studied the disputed questions and the method of disputation, after which (3) he began to dispute, discuss the disputed questions, with the jurisconsults (wa-ṣāra yatakallamu fī 'l-masā'ili ma'a 'l-fuqahā').[173]

The term masa'il was qualified in different ways, masa'il al-fiqh, masa'il al-khilaf, al-masa'il al-khilafiya, masa'il at-ta'liq, all of which referred to the disputed questions, questions or objections raised against legal opinions (fatwa, pl. fatawa), and which must be learned by the student-jurisconsult in the ta'liq[174] phase of his legal education. For instance, the above-mentioned Ibn Nubata was said to have learned by heart masa'il at-ta'liq, that is, the disputed questions taught in the ta'liq phase of his legal education.[175] Al-Kalwadhani was considered to have been the author of two works on khilaf, a major and a minor: *al-Khilāf al-kabīr* and *al-Khilāf aṣ-ṣaghīr*; the major was also entitled *al-Intiṣār fī 'l-masā'il al-kibār*, and the minor, *Ru'ūs al-masā'il*,[176] the terms masa'il and khilaf being interrelated and denoting controversy, disputed questions.

The student of law could do his ta'liq under one or several professors, his goal being to acquire (ḥaṣṣala) as complete a repertoire of disputed questions as possible, together with the method or methods of dealing with them. Since the great professors had each a ta'liqa, or more, a repertoire which included a system of questions and answers differing from that of another, the diligent student who aimed at the summit of his profession, riyasa, would be interested in collecting as many 'methods' as possible.

Two cases in point are those of the eleventh-century contemporaries Imam al-Haramain al-Juwaini and Abu Ishaq ash-Shirazi, both of the Shafi'i madhab. The first mentioned was said to have spent four years in Mecca and Medina – whence his sobriquet 'Imam of the Two Holy Cities' – teaching law and issuing legal opinions (yudarrisu wa-yuftī), but also 'collecting the methods of his school of law' (wa-yajma'u ṭuruqa 'l-madhhab).[177] Shirazi, for his part, did the ta'liq under several professors: Baidawi (d.424/1033),[178] Muhammad b. 'Umar ash-Shirazi, the first professor with whom he did this phase of his work,[179] 'Abd ar-Rahman al-Ghandajani,[180] and Abu 't-Taiyib at-Tabari, his last professor and the one with whom he continued the ta'liq for many years.[181]

The term ta'liqa, taken as a work prepared by the student in the last phase of his legal studies, was a repertoire of legal questions which the student had to be able to reproduce from memory on being examined by the professor of law.[182]

d. Authors of Ta'liqas

The ta'liq phase of legal studies appears to have come into play sometime in the second half of the third/ninth century. The celebrated

Shafi'i jurisconsult Ibn Suraij was said to have 'commented the law [of the school of Shafi'i], epitomized it, and elaborated new questions of law' (sharaḥa 'l-madhhab, wa-lakhkhaṣahū, wa-'amila 'l-masā'ila fī 'l-furū').[183]

Before Ibn Suraij, the practice seems to have been confined to *copying* verbatim the works of the authorities and memorizing them. Such was the case with the contemporary of Ibn Suraij senior, Abu Ja'far Muhammad b. Ahmad at-Tirmidhi (d.295/908), the top Shafi'i jurisconsult of his day (lam yakun li 'l-fuqahā'i 'sh-Shāfi'īyati fī waqtihī ar'asu minh), who said that he 'copied the books of Shafi'i' (katabtu kutuba 'sh-Shāfi'ī).[184] Earlier, Ibn Rahawaih (d.c.238/852), having engaged Shafi'i in a legal disputation reported by Fakhr ad-Din ar-Razi in his biography of Shafi'i, was so impressed by Shafi'i's legal knowledge that he personally copied all of his works. Ibn Rahāwaih was one of the great muhaddithun of his day, and *copying verbatim* was the practice in the study of hadith.[185] With regard to these two scholars, Tirmidhi and Ibn Rahawaih, nothing is said here of the practice of ta'liq or of the elaboration of new questions, essential to ta'liq.

Ibn Abi Huraira (d.345/946), disciple of Ibn Suraij and Abu Ishaq al-Marwazi,[186] and writer of a *Commentary* on the *Mukhtaṣar* (*Epitome of Law*) of al-Muzani, was said to have elaborated disputed questions in law (wa-lahū masā'ilu fī 'l-furū').[187] This *Commentary* was his ta'liqa which was in turn the object of the ta'liq of his disciple Abu 'Ali at-Tabari, who is said to have produced a famous ta'liqa of his own ('allaqa 'anhū 't-ta'līqata 'l-mashhūrata 'l-mansubata ilaih);[188] he also wrote a work on disputation, the first of its kind, and another on dialectic, among other works.[189]

Abu Hamid al-Isfara'ni, leading Shafi'i jurisconsult of his day, was the author of what was referred to as *The Great Ta'līqa* (*at-Ta'līqa al-kubrā*), containing, inter alia, a *Commentary* on the *Epitome of Law* of al-Muzani, and disputed questions on legal theory and methodology.[190]

Ibn Rizqawaih (d.412/1021) 'studied law and reported on Shafi'i law' (darasa'l-fiqha wa-'allaqa 'alā madhhabi 'sh-Shafi'i).[191] The qadi Abu Ja'far Muhammad b. Ahmad an-Nasafi (d.414/1023), Hanafi jurisconsult, authored a well-known ta'liqa.[192] Al-Mahamili ad-Dabbi (d.415/1024), a disciple of the above-mentioned Isfara'ini, produced a ta'liqa of his own,[193] and was pointed out in a biographical notice devoted to his son, as author of a ta'liqa.[194] Abu 'l-Hasan al-Bandaniji (d.425/1034), another disciple of Isfara'ini, produced a ta'liqa of his own.[195] This was also the case with an-Na'ini (d.447/1055), another disciple of Isfara'ini.[196]

Abu 't-Taiyib at-Tabari is the author of a ta'liqa, several volumes of which are preserved in the Top Kapı Sarayı Library of Istanbul.[197]

He studied under several professors of law, Abu Hamid al-Isfara'ini among them, and wrote several works on dialectic and disputation as well as a *Commentary* of Muzani's *Mukhtaṣar*.[198] Abu Nasr al-Marwazi (d.454/1062), a leading Shafi'i jurisconsult in Khurasan, studied under Isfara'ini in Baghdad, producing a ta'liqa in the process.[199]

Qadi Abu 'Ali al-Husain b. Muhammad al-Marwazi al-Marwarrudhi, a leading Shafi'i jurisconsult, was the author of a ta'liqa called by Nawawi, *at-Ta'līq al-kabīr*.[200] Another leading jurisconsult Abu Ishaq ash-Shirazi, after 'reporting' (ta'liq) under several professors, produced a *ta'līqa* of his own.[201]

The Hanbali jurisconsult, Qadi Abu Ya'la, composed a ta'liqa when he saw that none had been produced for the Hanbali madhab before him.[202] His disciple, the Hanbali qadi Ya'qub al-Barzabini (d.486/1093), had a ta'liqa in several volumes which was an abridgment of that of his professor.[203] Abu 'l-Muzaffar as-Sam'ani, the former Hanafi turned Shafi'i, was the author of a ta'liqa entitled *Ta'līqat al-Iṣṭilām*,[204] the full title of which is given by Hajji Khalifa as *al-Iṣṭilām fī radd Abī Zaid ad-Dabūsī*,[205] in refutation of the Hanafi Dabusi.

Among authors of ta'liqas cited by Hajji Khalifa there is the name of the famous Ghazzali, without a title.[206] His ta'liqa is most likely the work entitled *al-Mankhūl*, recently edited and published in Damascus.[207] It is a work on legal theory and methodology, based on the lectures of his professor Imam al-Haramain al-Juwaini. At the end of his work, Ghazzali states that he followed his professor's notes closely, without modification, except in the arrangement of the various sections and chapters, in order to facilitate its use as a reference. As'ad al-Mihani (d.523/1129), disciple of the aforementioned Abu 'l-Muzaffar as-Sam'ani, and a professor of law at the Madrasa Nizamiya of Baghdad, was the author of a ta'liqa referred to as *Ta'līqat al-khilāf*.[208] The Hanafi qadi 'Abd al-Aziz an-Nasafi (d.533/1139) wrote a ta'liqa in four volumes.[209] Ala' ad-Din al-'Alim (d.563/1168) wrote one whose title was taken from his name: '*al-'Ālimī*'. Barawi's (d.567/1172) work was referred to as *at-Ta'līqa fī 'l-khilāf wa 'l-jadal*.[210] Ibn al-Jauzi (d.597/1200) composed several ta'liqas, according to his own testimony in the introduction to his *al-Bāz al-ashhab*, of which he cites three.[211] Rukn ad-Din al-Hamadhani (d.600/1204) is credited with a ta'liqa entitled *at-Ta'līqa fī 'l-khilāf*, in three recensions: a major, a medium, and a minor.[212] The Hanbali jurisconsult Ghulam Ibn al-Muna (d.610/1213) wrote one ta'liqa referred to by Ibn Rajab as 'the famous ta'liqa'.[213] The Damascene historian Abu Shama (d.665/1267) said that the author's contemporaries in Baghdad called it *an-Naẓīf min ta'līq ash-Sharīf*, because he had reworked the notes of his professor, 'added to them and eliminated from them'.[214]

Al-Amidi (d.631 / 1234) is credited with two ta'liqas, a major and a minor.[215] And Salah ad-Din al-'Ala'i (d.761 / 1360) is credited with four, a major, a medium, a minor, and *al-Miṣrīya* (The Egyptian) in twelve volumes.[216]

e. Dimensions and Contents

Some of these ta'liqas were of a very impressive size. That of Abu Hamid al-Isfara'ini was said to have consisted of fifty bound volumes.[217] Abu 't-Taiyib at-Tabari's was described as consisting of ten bound volumes.[218] Other authors wrote several, each with its own title, in editions of various sizes. The contents of these works were not often described. There are, however, statements here and there that give us some idea of their contents. The ta'liqa of Isfara'ini was described in the following terms: It is a work 'in fifty bound volumes in which he reported the differences of opinion among the ulama, their theses, their objections, and their disputations . . . with excellent jurisprudence (=understanding) and superior insight'.[219]

Tabari's was described as 'a voluminous ta'liqa in ten bound volumes containing many argumentations and analogical reasonings'.[220] Baihaqi (d.565 / 1170) stated that he 'reported' the lectures of his professor Taj al-Qudat Abu Sa'd Yahya b. Sa'id: the chapter on zakat, alms-tax, and its disputed questions, then the rest of the disputed questions of law, 'not according to the classification of the fiqh chapters'; in other words, a random disposition of these questions.[221]

Ibn al-Jauzi's introduction to his *al-Bāz al-Ashhab al-munqaḍḍ 'alā mukhālifī 'l-madhhab* (The Grey Falcon that Swoops Down on the Adversaries of the Hanbali School), throws some light on the contents of a ta'liqa:

> Know – may God guide you aright – that when I followed the madhab of the Imam Ahmad b. Hanbal – may God be pleased with him – I beheld a man of great eminence in the religious sciences who had exerted – God have mercy upon him – the utmost of his power in the study of these sciences and of the doctrine of the Ancient Fathers to such an extent that no question could be raised but that he had a scriptural text to cite, or a remark to make, with regard to it. He was, however, a follower of the Ancient Fathers, and consequently composed works based solely on hadith. Thus I perceived that his teaching was devoid of those types of works which abound among the adversaries. So I composed lengthy commentaries, among them *al-Mughnī*, in several volumes, *Zād al-masīr*, *Tadhkirat al-adīb*, and others. In the field of hadith, I composed a number of works on the critique of credibility [al-jarḥ wa 't-ta'dīl]. I have not come across a ta'liqa on khilaf by any of them [i.e., the Hanbalis]. However, Qadi Abu Ya'la had said: 'I used to say "What is the matter

with the members of our school who discuss differences with their adversaries without citing Ahmad b. Hanbal?" Then I exempted them from blame, since we had no ta'liqa on fiqh.' But in the ta'liqa which he composed he did not make a distinction between doctrines that were valid and those that were rejected; though he did cite conjunctive syllogisms. I have observed among our companions, the Hanbalis, who teach law, those who resort to the ta'liqa entitled *al-Iṣṭilām*,[222] or the ta'liqa of As'ad,[223] or the ta'liqa *al-'Ālimī*,[224] or *at-Ta'līqa ash-Sharīfa*,[225] borrowing them for use in their classes. So I composed for them a number of ta'liqas, among which *al-Inṣāf fī masā'ili 'l-khilāf*;[226] *Junnat an-naẓar wa-jannat al-fiṭar*,[227] and *'Umad ad-dalā'il fī mashhūr al-masā'il*.[228] Then I thought it would be well to collect the hadiths noted down in writing and adduced as arguments by the members of our school of law, and I distinguished between the sound and the rejected, and I composed on the various schools of thought a book in which I cited all these hadiths, and entitled it *al-Bāz al-ashhab al-munqaḍḍ 'alā mukhālifī 'l-madhhab*.[229]

Ibn Rajab gave an extensive list of Ibn al-Jauzi's works and designated the following three as ta'liqas, a major, a medium, and a minor: *al-Bāz al-ashhab*;[230] *Junnat an-naẓar wa-jannat al-fiṭar*;[231] and *'Umad ad-dalā'il fī mushtahar al-masā'il*.[232]

Thus many works designated as ta'liqas do not carry the term itself in the title. Since it was essentially a work of some originality as regards its structure, and since the method, tariqa, it contained was personal, no two ta'liqas, or tariqas, were exactly alike. Yet there was such a thing as a tariqa for a region, the region's tariqas having enough in common to be called, for instance, that of Iraq, as distinguished from that of Khurasan: at-tariqa al-'Iraqiya, at-tariqa al-Khurasaniya. The ta'liqa, first developed by Shafi'i and Hanafi jurisconsults, appears to have been initiated by the Shafi'is. Shafi'i, himself, was considered the initiator of usul al-fiqh, legal theory and methodology. The Hanbalis adopted the ta'liqa in the fifth / eleventh century; while the Malikis were still without it towards the latter part of the sixth / twelfth century. The development of the ta'liqa went hand in hand with that of the college of law, first the masjid-khan, then the madrasa. It is noteworthy that this college of law, the madrasa, as far as can be determined through the available sources, was adopted first by the Shafi'is and Hanafis, then by the Hanbalis, and last, as well as least, by the Malikis.

f. The Ta'liqa and Fields Other Than Law

1) Grammar

The ta'liqa was a product of disputation. As such it could have been developed not only in law, but in other fields where disputation was also practised; namely, grammar, kalam, and medicine. But the

ta'liqa was primarily a textbook developed for legal studies in the colleges of law: the masjid, and later, the madrasa; in the other fields it was a late-comer.

Disputation is usually connected with theology; but some of the earliest disputations were in the fields of law and grammar. The jurisconsult Abu Qalaba al-Jurmi (d.104/722) disputed with contemporary jurisconsults, in the presence of the Umaiyad caliph 'Umar b. 'Abd al-Aziz, on a question of criminal law (qasama).[233]

Disputations in grammar were also early in date. The famous grammar of Sibawaih (d. 2nd half of second/eighth century), *al-Kitāb* (*The Book*) was described as a work from which one could learn disputation and inquiry.[234] The following technical terms of disputation appear in an anecdote concerning the Basrian grammarian al-Khalil (d.169/785): mas'ala (question); jawab (answer); mujib (answerer); i'tirad (objection); and inqita' (reduction to silence, defeat).[235] Another anecdote has him explaining why he did not dispute with an older colleague after having gone to him for the purpose. Al-Khalil answered: 'He [Abu 'Amr b. al 'Ala'] has had the position of ra'is, top man, for fifty years. I feared he would be reduced to silence and be disgraced in his own town'.[236]

When the Basrian Sibawaih came to Baghdad he disputed with al-Kisa'i and his disciples,[237] among whom al-Ahmar (d.c.194/810), who was the tutor of al-Amin (caliphate: 193-8/809-13).[238] The Kufan Tha'lab was considered as too much of a traditionalist, ignorant of the grammatical speculation of the Basrians. On the other hand, he had a well-stocked memory and could cite chapter and verse from the works of the Kufian grammarians al-Farra' (d.207/822) and al-Kisa'i.[239]

The early interest in disputation among the grammarians was perhaps a strong factor in establishing and maintaining the use of classical Arabic as the language of disputation. The Mu'tazili jurisconsult Bishr al-Marisi (d.218/834), disputing with Shafi'i (d.204/820), was censured for his inability to speak correct classical Arabic because of his lack of grammar.[240] Al-Akhfash (d. after 207/822), at-Tuwal (d.243/857)[241] and Abu Talib al-Adami[242] were grammarians known for their skill in inventing new questions, masa'il. The jurisconsult Ibn al-Haddad (d.345/956) followed the method of the grammarians in his regular Friday night sessions of disputation on questions of law.[243] The sessions were attended by the grammarian Ahmad b. Muhammad an-Naḥḥās (d.338/949).[244] The grammarian Mundhir b. Sa'id al-Balluti (d.355/966), Zahiri jurisconsult and qadi of Cordova, was known as an expert dialectician and disputant.[245] Isma'il b. al-Qasim al-Baghdadi (d.356/966), who studied *The Book* of Sibawaih under Ibn Durustawaih, wrote on the excellence of the Basrian school of grammar over that of the Kufian school, and

defended the grammatical theories of Sibawaih against the latter's adversaries within the Basrian school.[246] Muhammad b. Yahya ar-Ribahi al-Azdi (d.358/969) held a regular session of disputation on Fridays on *The Book* of Sibawaih. Up to the time of al-Azdi, grammarians in Cordova were not following the sophisticated methods of Eastern Islam in teaching grammar.[247] The Basrian grammarian as-Sirafi, author of a commentary on *The Book* of Sibawaih, was a Mu'tazili theologian, a Hanafi jurisconsult, and was knowledgeable in the foreign sciences.[248] Another Mu'tazili, the grammarian ar-Rummani (d.384/994) wrote two works on dialectic, *Adab al-jadal* and *Uṣūl al-jadal*, and many other works on disputation of the masa'il genre.[249]

Grammarians were expected to be familiar with works on the 'foreign sciences'; so much so that when this knowledge was lacking, the biographer often mentioned the matter. Thus the grammarian Ahmad b. Bakr al-'Abdi (d.c.420/1029) was said to have had no knowledge whatever of the 'ancient sciences'.[250] This in contrast, for instance, to the grammarian Muhammad b. al-Hasan al-Ahwal (fl.250/864), who wrote *Kitāb Ulūm al-Awā'il* and was a copyist of Hunain b. Ishaq, and to al-Marzubani (d.384/994), who wrote *Kitāb al-Awā'il*, both works dealing with the 'ancient sciences'.[251]

The titles of grammars from the early period and for several centuries afterwards, show clearly the consuming interest of the grammarians in disputation, disputed questions and the divergences between the two great schools of grammar, the Basrian and Kufian, and the differences of opinion among grammarians in general. The terms here are found also in works on law: masa'il, ikhtilaf, khilaf, jadal, usul. A sample list of such works follows: *Kitāb al-Masā'il al-kabīr* by Akhfash;[252] *Ikhtilāf an-naḥwīyīn* and *Kitāb al-Masā'il* by Tha'lab;[253] *Ikhtilāf al-Baṣrīyīn wa'l-Kūfīyīn* by Muhammad b. Ahmad b. Kaisan (d.299/911);[254] *al-Muqni' fī 'khtilāf al-Baṣrīyīn wa 'l-Kūfīyīn* by Ahmad b. Muhammad an-Nahhas;[255] *Kitāb al-Ikhtilāf* by 'Ubaid Allah b. Muhammad al-Azdi (d.348/959);[256] *al-Khilāf bain an-naḥwīyīn*, *Sharḥ Masā'il al-Akhfash*, *al-Khilāf baina Sībawaih wa 'l-Mubarrad* and *al-Masā'il wa 'l-jawāb min Kitāb Sībawaih*, as well as other works, by ar-Rummani;[257] *Masā'il al-Khilāf fī 'n-naḥw* by 'Abd al-Mun'im b. Muhammad of Granada (d.597/1200);[258] *al Masā'il al-khilāfīya fī 'n-naḥw* by al-'Ukbari al-Hanbali (d.616/1219);[259] *al-Is'āf fī 'l-khilāf* and *Masā'il al-khilāf fī 'n-naḥw* by Husain b. Badr b. Iyaz an-Nahwi (d.681/1282).[260]

The grammarian al-Anbari wrote books the titles of which are highly indicative not only of the grammarian's zeal for dialectic and disputation, but also of the close relationship in the development of grammatical and legal studies. Of the following five works of al-Anbari, all but the fourth are extant:[261] *Adillat an-naḥw wa 'l-uṣūl*,

al-Ighrāb fī jadal al-iʿrāb, *al-Inṣāf fī masā'il al-khilāf bain an-naḥwīyīn al-Basrīyīn wa 'l-Kufīyīn*, *at-Tanqīḥ fī maslak at-tarjīḥ fī 'l-khilāf*, and *Lumaʿ al-adilla fī uṣūl an-naḥw*. After citing the eight fields that make up the literary arts (ʿulūm ad-adab),[262] al-Anbari said that to these eight sciences he added two more which he originated, namely, the science of dialectic in grammar, and the theory and methodology of grammar, corresponding to the same two fields in law, 'for there is an obvious affinity between the two sciences, because grammar is a rational science derived from traditional knowledge, as is the case with law; this is a truth known to scholars who know both fields'.[263]

From the foregoing pages, it is clear that grammarians practised disputation from an early period in Islam, and continued to do so, witness the statement of al-Anbari showing the affinity between the methodologies of grammatical and legal studies. A good number of grammarians were attracted to Muʿtazilism in theology, were of a rationalist bent, knowledgeable in the field of logic and the other branches of the 'foreign sciences'. Nevertheless, grammarians followed the example of the jurisconsults in developing a methodology for grammatical studies, modelled on those developed in legal studies, which explains the development of the taʿliqa in grammar. A reputed taʿliqa on grammar was that of Abu 'l-Hasan b. Babshadh (d.469/1077), a work which the author had left in draft form. It was said that if he had made a fair copy of it, it would have come to fifteen bound volumes. The grammarians dubbed it *Taʿlīq al-ghurfa*, *The Taʿlīq of the Upper Room*, where the author used to work on it in seclusion. This taʿliqa was passed on down through a line of three generations of disciples, each passing it on to the other. No students were allowed to copy it.[264]

The grammarian Zahir ad-Din al-Kinani (d.626/1229) was said by his friend and classmate, the historian Abu Shama, to have been a sahib, fellow, of their professor whom he accompanied to Egypt and Syria. He continued to 'report' and work under his professor's direction in both law and ʿArabiya until the latter's death, reporting 'many things that no one else has' (*ʿallaqa ʿanhū ashyā'a kathiratan lam yuʿalliqhā aḥad*). Abu Shama prided himself on the possession of this exclusive reporting, in the autograph of his friend.[265]

2) Kalam

By the latter part of the fourth/tenth century, the taʿliqa was so successful in legal studies that the Muʿtazili philosophical theologians were desirous of adopting it for the teaching of kalam. Their biographer Ibn al-Murtada (d.840/1437)[266] related that 'the chief qadi ʿAbd al-Jabbar [d.415/1024] was asked to compose a work of theological opinions on kalam [fatawa 'l-kalam] which could be read [yuqra'], that is, recited from memory, studied, and reported [yuʿallaq], just as is done in the field of law [fiqh]'.[267] Qadi ʿAbd al-

Jabbar (d.415/1024) was known to have written works on dialectic and disputation. The poet Ma'arri (d.449/1057) cited two such works entitled *al-Mughnī* and *al-'Umad*, most likely with Qadi 'Abd al-Jabbar in mind.[268] The anecdote shows clearly that the ta'liqa was the result of a method of teaching peculiar to the jurisconsults, a method which dealt with fatawa, legal opinions, and which was so successful a textbook that it appealed to the philosophical theologians. Perhaps otherwise occupied at the time, 'Abd al-Jabbar passed the request on to his disciple Abu Rashid Sa'id b. Muhammad an-Nisaburi, who, in answer to the request, was said to have composed a ta'liqa entitled *Dīwān al-uṣūl*.[269]

3) Medicine

So pervasive was the teaching method of the jurisconsults that not only was it introduced in grammar and kalam but also in medicine, as can be seen in the work of the jurisconsult and physician al-Lubudi (d.670/1272) entitled *Tadqīq al-mabāḥith aṭ-ṭibbīya fī taḥqīq al-masā'il al-khilāfīya 'alā ṭarīq masā'il khilāf al-fuqahā'* ('The Minute Examination of Medical Investigations Regarding the True Solution of Disputed Questions, Following the Method of Disputed Questions Practised by the Jurisconsults').[270]

The success of the ta'liqa in legal education is amply illustrated by its adoption in other fields. All indications point to the latter part of the third/ninth century as the period in which the ta'liqa took form. This is the period preceding the development of the madrasa, when the masjid was the only college system in which law was taught. It was the period in which the Sunni madhabs were going into that process of consolidation which gradually reduced their number to four, a process in which the ta'liqa played an important role in the education of the advocate.

g. The Ta'liqa and the Teaching of Law

Thus the ta'liqa was a written account of material for the faqih: for the graduate student faqih, as well as the master faqih. For the graduate, the material was to be studied for oral practice, to develop a habit of disputation in the student whose ultimate goal was to issue legal opinions and stand ready to defend them against potential opponents. He obtained this material by taking notes from the lectures of his master as well as from books. He had to have an intimate knowledge of this material, ready to be quizzed by his master on any or all of it, before passing into the last phase of his legal studies, 'the class of *jurisprudence*', tabaqat al-ifta', where he apprenticed for the issuing of legal opinions.

For the master faqih, the ta'liqa was a record of disputed questions of law from which, as professor of law, he taught the graduate student faqih both the material and the method to deal with it. If the material and method were his own, the ta'liqa served as a record from which he

later wrote his definitive work, a summa on usul al-fiqh, the theory and methodology of law. It is noteworthy that such works were normally written in the later years of a master jurisconsult as a professor of law: it was the culmination of his career.

Ghazzali's legal career affords us an illustration of this development. He studied law under the jurisconsult-theologian Imam al-Haramain al-Juwaini in Nishapur. Ghazzali produced a ta'liqa under his master. Biographers related that the master Juwaini, on reading it, exclaimed: 'You have buried me alive! Could you not have waited till I was dead!' – meaning that Ghazzali's *ta'liqa* eclipsed his own.[271] As the editor points out in his introduction, Ghazzali's work shows that he disagreed with the master on several points. This fact would justify the remarks of the master, just quoted, whether or not they were actually made. Ghazzali tells us at the end of his work how he dealt with the master's ta'liqa.[272] The very title of Ghazzali's ta'liqa tells that it is a *sifting*, a *résumé*, a *report*, a careful reworking of the notes of his professor, *extracting* from them what he considered as the most essential, and rearranging the material to facilitate its use. The result was an obvious improvement on the model.

Later on in his career, Ghazzali wrote a juridical *summa* which he entitled *al-Mustaṣfā min 'ilm al-uṣūl*, recalling the work of his youth, *al-Mankhūl min 'ilm al-uṣūl*. The term *al-mustaṣfā*, *The Selected*, being synonymous with *al-Mankhūl*, *The Sifted*, is derived from the verb *istaṣfā*, meaning to take the best, or choice part of something. Ghazzali wrote the *Mankhūl* sometime before 478 / 1085, the year of death of his master, Juwaini. It was the work of his youth, the very first he composed as a graduate law student. His ta'liqa, written from the law course of his former professor Abu Nasr al-Isma'ili (d.405 / 1014) in Jurjan, remained most likely in the form of notes. On the other hand, he finished writing the *Mustaṣfā* on the 6th of Muharram 503 (5 August 1109). He died two years later.[273]

With the *Mankhūl* Ghazzali could begin teaching law. His biographers said that 'he taught law in the lifetime of his master' (darrasa fī ḥayāti shaikhih).[274] Biographers considered such a piece of information to be of importance. Juwaini's cry, 'You have buried me alive! Could you not have waited till I was dead!'[275] seems to imply both admiration and pride on the part of the professor for his disciple, but also a hint of apprehension. The licensing of a disciple to teach in one's lifetime carried with it a risk and a threat: the risk of a disciple's performance turning out *not* to be a source of pride, and the threat that the disciple would not merely be a success as a jurisconsult, but become an adversary in the arena of disputations, and issue legal opinions contesting those of the master. To preclude such a threat, a professor hired his best disciple as his assistant who 'repeated' the master's lesson, with the title of 'repetitor' (mu'id). When the disciple

was hired in another locality, the threat was not as imminent.

4. The Scholastic Method as Function: The Munazara-Disputation

a. The Suhba Stage of Studentship and the Aim for Riyasa

The function of disputation was to prepare the law student to become a mufti, a jurisconsult, qualified to issue legal opinions (fatwa, pl. fatawa). As such he was also qualified to become a mudarris, professor of law. Mastering the art of disputation was the last stage in his preparation for the function of mufti as well as that of mudarris. During this stage he was a sahib, fellow of the professor of law. At the end of this stage, he aspired to riyasa, leadership, in his field. The following pages deal with these two fundamental concepts of Islamic education, suhba and riyasa.

1) Suhba

Suhba, fellowship, is a concept that goes as far back in Islam as Islam's founder, the Prophet, whose disciples were called sahib (pl. ashab, sahaba), disciple, associate, companion, fellow. As old as Islam itself, the institution of fellowship antedates the college system in Islam. The relationship between master and disciple supersedes in importance the locale where the teaching took place: the master's home, the master's shop, some merchant's shop, a hostel, a hospital, the outdoors – the locales changed with the changing times, but the master-disciple relationship remained.

Without the institution of the suhba it would be difficult to understand how the educational activity was carried on in the early period. One would be at a loss to explain how the seemingly haphazard choice of locales could account for the prolific production of works in a great variety of fields: Arabic language and literature, grammar and lexicology, poetry and bellettristic prose, Koranic science, law and legal theory and methodology, mysticism, theology, philosophy, and a host of others.

Not all who were taught by a master were his fellows; only those who were his constant companions were so considered. Eventually, in a college of law, whether the masjid or the madrasa, the sahib was the student who had finished his basic course of law and had begun graduate training by adhering to one particular master on a steady basis. Whence the verbs denoting this constancy, derived from the radicals of the term sahib, ṣḥb;[276] namely, ṣaḥiba (Form I of the verb), and *ṣāḥaba* (Form III): and other synonymous verbs, such as *lazima* (Form I), *lāzama* (Form III), and ittabaʿa (Form VIII of tbʿ), – all denoting the notion of following or adhering to a master in a constant and exclusive way, devoting themselves to working under his direction.

So constant and exclusive was this relationship that one often detects a possessive attitude on the part of the master or the disciple;

the disciple proud to claim intellectual descendency from the great scholar, the master proud of having produced a scholar of quality. When Balkhi's (d.319/931) disciple, Abu 'l-Husain al-Khaiyat (d.c. end 3rd/9th c.), wanted to pay a visit to Abu 'Ali al-Jubba'i, Balkhi pleaded with the disciple not to do so, for fear that he might later be designated the disciple of Jubba'i. Balkhi made his plea 'in the name of the fellowship' existing between them.[277]

The companions of the Prophet were his constant fellows. They would carry on his teachings after him, and disseminate them. They were the first ulama, the first learned men of Islam. They were his spiritual heirs, as were those who would come after them, and so on, down through the centuries, each generation deriving its authority ultimately from the Prophet, through the transmission of the generations preceding it. They were, in the words of the hadith, 'the heirs of the Prophets': al-'ulamā' warathatu 'l-anbiyā, 'men of religious learning are the heirs of the prophets'.

The first corpus of religious learning, after the Koran, were the hadiths. The term suhba was naturally associated with the transmission of the corpus of hadiths; but it was soon borrowed by the other fields, such as Sufism, grammar and law.

Muslim education was born with the Prophet's mission, and that most basic and enduring institution which he initiated in Islam, the suhba, served for the transmission of his sunna, was developed, and went on to serve other fields. But this institution cannot, by itself, explain the great achievements in scholarly production which took place before the advent of the college. Along with the institution of the suhba, consideration must also be given to the institution of riyasa, the fruits of which provided the incentive and motivation for rising to the heights of achievement.

2) Riyasa

The doctoral degree is universally considered as a certificate qualifying its holder for a teaching post in a university. It is a product peculiar to the university system which originated and developed in the Christian West. Before the advent of the university, the degree was non-existent.[278] It became so important in the university system that all universities, including Oxford,[279] applied to Pope or Emperor to be granted the authority to confer the degree of licentia ubique docendi, the licence to teach anywhere; this, in spite of the fact that universities such as Paris and Oxford were considered to possess this authority through custom (ex consuetudine), being among the oldest universities.

In Islam, the university did not exist until modern times, when it was borrowed in the nineteenth century from the West. With the absence of the university and its faculties, the degree, as it came to be known in the West, did not exist. Nevertheless, Islam did not lack a

system whereby the fitness of a candidate to teach could be determined. This system is to be found in the institution of riyasa.

A ra'is, 'leader', 'chief', also referred to as ra's, 'head', was the top man, the *first* man, in a given field of endeavour. The imagery employed in reference to him was one of movement upward, reaching for the heights, or forward, outstripping all others, as in a race. He was, in relation to others, as the head (ra's) is to the body, uppermost (ra'is); or he was one who outdistanced all others, who was ahead of them, out in front. The metaphors illustrating this imagery were abundant, among them the following: kāna imāman la yushaqqu ghubāruh; literally: he was a leader whose dust could not be penetrated. He was likened to a thoroughbred who so outdistanced the other horses in a race that by the time they reached the place where he was, the dust had already settled. He so outdistanced them that they could not keep up with the dust raised by his hoofs, let alone keep up with him.

The terms used in this regard were also illustrative of this imagery. Here are some of the notions one meets in the texts: (1) the notion of thoroughbred quality and strength: kāna min fuḥūli 'l-munāzirīn (he was a disputant of stallion strength); kāna mimman anjaba fī 'l-fiqhi li-dhakā'ih (he was among those who exhibited thoroughbred qualities in law because of his keen intelligence); (2) the notion of excellence: bara'a fī 'l-fiqh (he excelled his companions in the knowledge of law); fāqa fī 'n-naẓar (he surpassed his companions in disputation); (3) the notion of first place: kāna muqaddaman fī 'l-fiqhi wa 'l-hadīth (he was put in first place in the knowledge of law and traditions); taṣaddara, meaning to take first place in a field of knowledge, it being understood that he was placed there by competent authority, as in the case of a master telling his top student to take first place in the study circle: others assumed it on their own initiative: taṣaddara li-nafsihī min ghairi an yarfa'ahū aḥad, in which case he would be open to challenge; (4) the notion of superiority and leadership: Shaikh al-Baṣra (the Grand Master of Basra), Amīr al-Mu'minīn fī 'l-hadīth (the Commander of the Faithful in the knowledge of hadith), kāna ra'san fī 'l-'arabīya wa-'sh-shi'r (he was the leader, the leading scholar, in the Arabic linguistic arts and in poetry), kāna saiyida ahli zamānih (he was the Lord of his contemporaries); (5) the notion of nobility: kāna Mālik lā yuqaddimu 'alaihī aḥadan li-nublihī 'indah (Malik would not allow anyone to be placed ahead of him because of Malik's opinion of his nobility in scholarship); (6) the notion of swiftness in the attack: Ibn Suraij (d.306/918) was nicknamed al-Bāz al-Ashhab (the Grey Falcon); (7) the notion of valour on the battlefield: Abu Ishaq ash-Shirazi was described by Ibn 'Aqil as Fāris al-munāẓara, the knight of disputation (cf. this with 'chevalier de la dialectique', the sobriquet of Abelard [d.1142]);

(8) the notion of uniqueness: tawaḥḥada fī 'l-fiqh wa'l-jadal (he was alone in the knowledge of law and dialectic); kāna nasīja waḥdih (he was a man sui generis, literally: he was weaved from the cloth of his own uniqueness); kāna qāti'a-'n-nuẓarā' (he was the annihilator of those who would be his equals); kāna 'adīma 'n-naẓīri fī ma'rifati 'l-jadal (he lacked his likes in the knowledge of dialectic); and so on.

The concept of riyasa and aspiration to it predates the fine art of disputation; but with the latter's development no one could claim riyasa without mastering the new art. Abu 'Abd Allah al-Azdi (d.358/969) of Cordova is cited as the grammarian who brought the scholastic method of disputation from the Muslim East to Andalusia where this sophisticated method was unknown. His biographer Zubaidi said of him that he laid out the method of disputation for his Andalusian colleagues, explaining to them how the Eastern experts refined the art in all its aspects, treating, in an exhaustive manner, all of its principles, and that it was in this way that its champions became entitled to the rank of riyasa.[280]

The scholastic method of disputation developed in Baghdad, and from there went on, not only to Spain in Western Islam, but also to other parts of Eastern Islam. Abu 'Abd Allah ath-Thaqafi (d.328/940) of Nishapur is cited as the jurisconsult who had brought the art of disputation from Baghdad to Nishapur where it had been unknown before him.[281]

The aspirant to riyasa arrived at his goal by a series of contests in the art of disputation. He had consistently to win against all challengers. He became a ra'is in an actual contest, or by default, meaning that challengers were lacking, or had conceded. One often comes across the statement that such-and-such a person was the leading jurisconsult of his school of law, and that his position as its leading scholar was conceded by the members of that school: kāna faqīhan 'āliman bi-madhhabi Fulān, ra'san fīh, yusallimu lahū dhālika jamī'u aṣḥābih (he was a jurisconsult who knew the legal doctrine of So-and-So, a leading scholar therein, which topmost position was conceded by all of his fellow-jurisconsults).

To get to the top, the aspirant had to work long and hard. The less motivated trying to seek it by short cuts, were warned of such folly, (meter: ṭawīl):

Tamannaita an tusmā faqīhan munāẓiran,
Bi-ghairi 'anā'in; fa 'l-junūnu fununu.
Fa-laisa 'ktisābu 'l-māli dūna mashaqqatin
Talaqqaitahā; fa 'l-'ilmu kaifa yakūnu?

(A jurisconsult-disputant you wished to be called / Sans effort! Oh Folly, of many sorts thou art! / Gaining riches does not come without giving of yourself; / With what more of yourself, for knowledge, must you part!)[282]

After meeting his challengers and reducing them to silence, the aspirant could reach what he thought to be the heights only to find another occupying the same level. In this case he would have to settle for a *share* of the topmost position. Here the terminology is quite clear: musharaka, meaning that the same position, the same level of knowledge, was shared by another, a level that was not topmost. Biographical notices often described an intellectual as brilliant in a given field and *having a share in* (lahū mushārakatun fī) one or more other fields. Between two rivals, neither of whom could beat the other definitively, the topmost position had to be shared, or one had to leave for another town where he could achieve independent leadership. The terminology in this regard was also quite clear: intahat ilaihī 'r-riyāsatu bi-Baghdad (the topmost position in Baghdad ended up with him). This could mean that the former leader had died, or that he had withdrawn from the position, or that a rival had given up the struggle, and so on. Some attained leadership by outliving their rivals: 'āsha ḥattā ṣāra ra'īsa 'sh-Shāfi'īya (he lived long enough to become the leader of the Shafi'i jurisconsults);[283] wa-'mtadda 'umruhū fa 'ntahā ilaihī 'ilmu 'n-naḥw (his lifespan was a long one, so leadership in the field of grammar ended up with him).[284]

That riyasa could be absolute or relative is illustrated by the notion of primus inter pares, as can be seen in the following titles: amir al-umara' (princes of princes, prime prince); malik al-muluk (king of kings); sultan as-salatin (sultan of sultans); shaikh ash-shuyukh (master of masters); qadi 'l-qadat (judge of judges); 'alim al-'ulama' (savant of savants); faqih al-fuqaha' (jurisconsult of jurisconsults), and so on, in every conceivable field of endeavour, including the notion itself of top man, ra'is ar-ru'asa' (topmost among top men).[285]

If one could not achieve riyasa in one place one could attempt it at another. For instance, when Zufar (d.158/775) disputed with Abu Yusuf, and consistently held the upper hand, Abu Hanifa advised Abu Yusuf to try in another locality, saying: lā taṭma' fī riyāsati baladin fīhī mithlu hādhā (do not hope for the leading position in a town in which there are the likes of this man); in other words, 'Give it up! You'll never make it here with this man around. Try somewhere else.'[286]

Records were kept at different intervals as to who was the ra'is in a given field; for instance, Sufyan ath-Thauri had achieved the top position in hadith, while Abu Hanifa had it in qiyas, and Kisa'i in the Koran, and so on.[287] Dhahabi gives a list of those who were the leaders in their respective fields at the beginning of the fifth/eleventh century: Abu Ishaq al-Isfara'ini, head of the Ash'aris; Qadi 'Abd al-Jabbar, head of the Mu'tazilis; ash-Shaikh al-Muqtadir, head of the Rafidis; Muhammad b. al-Haidam, head of the Karramis; Mahmud b. Sabuktakin, head of the Maliks, and so on. To this list, as-Suyuti

added others, among whom al-Hakim, as head of the heretics (ra's az-Zanadiqa), and al-Qadir as the greatest learned man ('alim) among the caliphs.[288]

Education in Islam retained its personalist character, the suhba relationship between master and disciple. Faculties of masters were alien to a system that had not developed the university. As there were no faculties, there were no degrees in the western sense of the term. A Muslim scholar, unlike his western counterpart, could not hope for the time when he could receive the doctoral degree and thus come to the end of his struggle to the top. He had to prove himself at every turn. To have a successful academic career, he had first to rise to the top, and then to maintain his position there. His situation was similar to the gunman in the American films called 'Westerns' who was a target for all newcomers aspiring to his position; or to the champion boxer, who was to defend his title against all contenders. And this he did in the arena of disputation.

b. Regular Sessions of Legal Disputation

Disputations were held in the caliphal court of Harun ar-Rashid.[289] It was there that Malik used to call on his disciple 'Uthman b. 'Isa b. Kinana (d.181/797) to engage Abu Yusuf in disputations. Upon Malik's death, 'Uthman succeeded to the chair of his study-circle.[290]

Al-Husain b. Isma'il ad-Dabbi al-Mahamili (d.330/942), a muhaddith and jurisconsult who held the qadiship of Kufa for sixty years, was said to have instituted in his home regular sessions of disputation in law for a period of sixty years, from 270/883 to 330/942, during which period these sessions were frequented by jurisconsults on a steady basis.[291]

The wazir 'Ali b. 'Isa (d.344/956) provided for regular sessions of disputation in his court (majlis an-naẓar li-'Alī b. 'Īsā al-Wazīr), in the middle of the fourth/tenth century. The following anecdote allows a glimpse of the format and purpose of one of the sessions. A woman came complaining to the wazir one day about the official in charge of decedents' estates (sahib at-tarakat). It happened to be the day on which sessions of disputation were being held. When the two opposing teams of jurisconsults appeared for the disputation (falammā ijtama'a fuqahā'u 'l-farīqain), that is, the advocates for the two sides of the theses to be disputed, the wazir asked them to conduct their disputation on the question of appointing as heirs relatives from the maternal side of the decedent (taurīth dhawī 'l-arḥām).[292]

The Maliki qadi Abu Tahir adh-Dhuhli (d.367/978) instituted regular sessions of disputation frequented by jurisconsults, in which he acted as mediator between the two contending sides.[293] Tanukhi's father (d.384/994) also had such regular sessions where contending jurisconsults met for disputation.[294] Abu Mansur b. Salihan (d.416/1025), the wazir of the two Buwaihids 'Adud ad-Daula and his

brother Baha' ad-Daula, held regular sessions between contending disputants as part of his patronage of religious doctors and literary men.[295] The Hanafi jurisconsult Abu Ja'far as-Simanani (d.444/1052) held regular sessions of disputation at his home. Hanafi jurisconsults, when they took part in rationalist theological movements, normally adhered to Mu'tazilism; but Simanani was an exception to this rule in that he adhered to Ash-arism.[296] The Hanbali Sharif Abu Ja'far ran regular sessions of disputation in his masjid on Darb al-Matbakh (Kitchen Road) in Baghdad. The Shafi'i jurisconsult, Shirazi, was among its regular participants.[297]

Among the jurisconsults there were sparring partners who disputed on a regular basis. Abu 'Abd Allah al-Jurjani (d.398/1008) disputed regularly against Abu Bakr ar-Razi (d.370/981);[298] both were Hanafis. Such was also the case between the Shafi'i jurisconsult Ibn Suraij and the Zahiri Abu Bakr b. Dawud (d.297/910),[299] as it was between the Shafi'i al-Kiya al-Harrasi (d.504/1118) and the Hanbali Ibn 'Aqil.[300]

There are many anecdotes regarding repartees between the contenders. Abu Bakr b. Dawud complained one day to his adversary Ibn Suraij who was conducting the disputation at a swift pace: 'Give me time to catch my breath' (abli'nī rīqī, literally: 'Let me swallow my saliva'); to which Ibn Suraij replied: 'You have my leave to swallow the Tigris', that is, take all the time you want! On another occasion, placed in the same situation, Abu Bakr said: 'Give me a moment's respite' (amhilnī sā'a); to which Ibn Suraij replied: 'You have from now till doomsday' (amhaltuka mina 's-sā'ati ilā an taqūma 'as-sā'a, literally: 'I grant you a respite from this moment to the Hour of the Resurrection!' There is a play here on the word sa'a, meaning moment, hour, and technically, the Hour of Resurrection).[301]

Disputations such as these drew large crowds of spectators. They were also performed ceremonially, on occasions of state,[302] or during the period of condolence following the funeral of a master-jurisconsult, three sessions of disputation taking place usually on three consecutive days,[303] the disputations being engaged in by the new incumbent to the professorial chair.[304] On all these occasions jurisconsults of great, as well as of modest, reputations attended.[305] The sessions often ran from sunset to midnight.[306]

c. Tactics, Violence and Recurrent Injunctions

Biographical literature has preserved some anecdotes on the jesting and 'dirty tricks' that took place in the course of disputations. One of the recommendations given by authors of books on dialectic and the art of disputation was that the answerer should make sure that the question posed by the questioner should be straightforward, otherwise one might fall unsuspectingly into a trap by answering it as it stands. Such a trap is illustrated in the following anecdote related by

Yaqut. Kaisan once asked Khalaf al-Ahmar (d.180/796): 'Was al-Mukhabbal a poet, or was he of the tribe of Ḍabba?' This was an insult to the tribe of Ḍabba, since the implication was that they produced no poets, at a time when tribes prided themselves on the excellence of their poets, who were their publicists and the chroniclers of their battles and fighting prowess. An answer to the question as it stands would confirm the insult whether the answer affirmed or denied either part of the disjunction. Khalaf, not falling into the trap, replied: 'Straighten out your question, fool, that I may give you an answer to fit it!'[307]

It often happened in a disputation that a disputant, unable to subdue his opponent, resorted to ridicule or downright insolence. 'Ali an-Nashi' (d.365/976), an amateur of jokes and jests, had a particularly developed sense of humour, and did not hesitate to go to extremes to ridicule and embarrass his opponent. An anecdote has it that he was once engaged in a disputation with al-Ash'ari, eponym of the Ash'ari theological movement. The disputation was in progress when, for no reason at all, he slapped al-Ash'ari's face. Taken aback, Ash'ari demanded the reason for his opponent's unprofessional conduct. Nashi' said: 'that is God's doing, why get angry with me?' Beside himself, Ash'ari exclaimed: 'It is your doing alone, and it is bad conduct exceeding the bounds of decency in a disputation!' Whereupon Nashi' replied triumphantly: 'You have contradicted yourself! If you persist in your doctrine (regarding responsibility for human acts), then the slap was God's doing; but if you have shifted from your position, then exact the equivalent (by slapping me in return)!' Whereupon the audience broke off in peals of laughter;[308] Nashi' had made his point that humans are responsible for human acts.

Disputation was very much a medieval Muslim pastime. The following anecdote illustrates the cleverness of a cunning disputant in winning the match against a straightforward opponent. The match took place before a sixth/twelfth-century governor of Khuzistan who brought the two disputants together to perform in his presence. The subject was theology and one of the opponents was stronger than the other in classical Arabic, the idiom used in disputations. Before a great crowd of spectators, ulama and laymen, the stronger in language spoke in an obscure and far-fetched classical Arabic. The audience was preponderantly in his favour when his opponent, failing to understand the language, made a very poor showing. But the sequel was not favourable to the winner. Another match was arranged between him and another opponent who, being on to his tricks, was prepared to pay him back with his own coin. The disputation ended in his disgrace in the eyes of the audience, who then spread the story far and wide, making it a topic of conversation in the market-places and on cere-

monial occasions, which cost the trickster his reputation.[309]

The following anecdote illustrates the need to keep the disputation moving at a regular pace, to avoid having one adversary turning the dialogue into a soliloquy. The famous Ash'ari theologian al-Baqillani (d.403/1013) was known for his longwindedness in a disputation. After a very long and drawn out speech during a disputation with Abu Sa'id al-Haruni, he turned to the audience and announced: 'Be my witnesses that if my opponent merely repeats what I have said, and nothing else, I will not demand an answer of him!' (that is, 'I will not advance any other objections, but will concede the disputation in his favour!'). Whereupon al-Haruni retorted: 'Rather be my witnesses that if my opponent repeats his *own* words, *I* will be the one to concede!'[310]

Because of the contention inherent in disputations, they often led to altercations, and sometimes to violence and bloodshed. A rash man called Fityan, jurisconsult of the Maliki School of law in Egypt, engaged frequently in disputations with Shafi'i in the presence of large audiences. On one occasion, when Shafi'i had the upper hand in the disputation, Fityan, unable to bear the thought of defeat, began to abuse his opponent by cursing him: but Shafi'i kept cool, paying no attention to the abuse. Someone then brought a charge against Fityan for cursing Shafi'i, a descendant of the Prophet, and witnesses testified to this effect. Fityan was beaten, put on a camel and paraded in public, while a crier proclaimed that such was the punishment of those who curse the Prophet's descendants. Following this, a band of Fityan's supporters waited outside of Shafi'i's study-circle until his disciples had left, then attacked and beat him. Carried to his home, Shafi'i was bed-ridden until he died as a result of the blows he had received.[311]

Disputations often degenerated into quarrels. One runs across statements to this effect: 'There were disputations between them on the subject of law which led to feuding' (kānat bainahum munāẓarātun fī 'l-furū'i addat ilā 'l-khiṣām).[312] The ideal disputant was one who had the courage to stand up to his opponent, but who could control his temper, not allowing it to run away with him. This ideal is reflected in a description given of al-Katib al-Isfahani (d.597/1200): 'He is like flint – cool on the outside, but fire within!' (huwa ka 'z-zinād – ẓāhiruhū bārid, wa-bāṭinuhū fīhī nār![313] Now and then matters would come to such a pass that public disputations would be prohibited. As early as 279/892, the caliph issued a decree proclaiming throughout the city of Baghdad that preachers and astrologers were to be banned from the streets, and booksellers to be administered an oath to refrain from selling books on philosophy, kalam, and dialectic.[314]

Five years later, in 284/897, the caliph again exhorted the people

to forsake their zealous partisanship. He prohibited preachers from preaching in the Mosques and on the public roads, the booksellers from plying their trade in public squares, and the leaders of study-circles for fatwas in the Mosques and others from conducting their disputations. He issued a decree prohibiting assemblies of any kind, announcing that those who assembled to hold disputations would be liable to punishment by flogging.[315]

Much later, in 408/1017, the caliph al-Qadir exacted retractions from the Muʿtazili Hanafi jurisconsults in which they abjured their Muʿtazilism. He then prohibited them from discussing, teaching, or holding disputations on Muʿtazilism, Rafidism, or any other doctrines contrary to the tenets of Sunni Islam. They signed their retractions to this effect under pain of exemplary punishment. Outside Baghdad, the Ghaznawid Mahmud b. Sabuktakin carried out the injunctions of the caliph in the territories under his command.[316]

The qadi of Damascus, Muhyi 'd-Din al-Qurashi (d.598/1202) prohibited the study of books on logic and dialectic. At the Taqawiya College where he was professor, he required his law students to hand over the books they possessed on these subjects; then, in the presence of the whole student body, had these books torn to shreds.[317]

These injunctions were not confined to the lands of the eastern caliphate. The Almohad al-Mansur of North Africa and Spain (reign: 580-95/1184-99) was intent upon putting an end to literature on logic and philosophy in the lands under his sway. He ordered that books on these subjects be burned, and he prohibited their study whether in public or in private, threatening capital punishment for those found studying them or in possession of them.[318] As late as the year 626/1229, al-Malik al-Ashraf (sultanate: 626-35/1228-37), on coming to power in Damascus, issued a proclamation prohibiting jurisconsults from studying anything but hadith, Koranic exegesis and law. He also made clear that anyone studying logic and other 'foreign sciences' would be banned from the city.[319]

The poet Ahmad al-Isfahani, among others, composed poetry in condemnation of jurisconsults who would give up the legal science of Shafiʿi and Malik, to replace it with the philosophy of Proclus:

Fāraqta ʿilma 'sh-Shāfiʿīyi wa-Mālikin;
  Wa-sharaʿta fī 'l-Islami ra'ya Ruqullusi.
Wa-arāka fī dīni 'l-jamaʿati zāhidan,
  Tarnū ilaihī bi-maili ṭarfi 'l-ashrasi.

(The learning of Shafiʿi and Malik you've forsaken; / and Proclus you brought to Islam for innovation. / The Community's beliefs, I see, you can't abide, / giving them the eye of intellectual pride.)[320]

Other verses are often cited indicating which subjects to study and which to shun. Verses attributed to Shafiʿi advocate studying the

Koran and hadith, symbolic of the Islamic religious sciences, all else being nothing but the whisperings of the devil (wa-mā siwā dkāka waswāsu 'sh-shayāṭini).[321] Other verses, by the Hanbali al-Khaiyat (d.541 / 1146), advocate fiqh, grammar and hadith, symbolically the Islamic sciences and their ancillaries, but warn against kalam, philosophical theology, because it is heresy – one that would tear open (in its practitioner's religious faith) a hole so wide as to be beyond the patcher's repair (thumma 'l-kalāmu fa-dharhū fahwa zandaqatun / wa-kharquhū fahwa kharqun laisa yartaqi'u).[322]

The Inquisition of the first half of the third / ninth century, in which Sunni leaders were flogged, some to their death, for not espousing the Mu'tazili doctrine of the created character of the Koran, brought on the resurgence of traditionalist Sunnism in Islam. Manifestations such as those cited above were the result of the traditionalist reaction to the previous excesses of rationalism.[323]

The tension between traditionalism and rationalism is illustrated in the verses of the poet Abu 'l-'Ala' al-Ma'arri (d.449 / 1057), of which there are two versions, one favouring a rationalist interpretation, and the other, a traditionalist one, both of which versions have one verse in common:

Fī kulli amrika taqlīdun tadīnu bihī
hattā maqāluka 'rabbi wahidun aḥadu'
Wa-qad umirna bi-fikrin fī badā'i' ihī
fa-in tafakkara fīhī ma'sharun laḥadū
Lau-lā 't-tanāfusu fī 'd-dunyā la-mā wuḍi'at
Kutubu 't-tanāẓuri lā 'l-Mughnī wa-lā 'l-'Umadu.

(In all you do you follow some tradition, / Even when you say 'My Lord is One, Unique'. / But He's ordered us to reflect on His creation, / Yet when we do we're dubbed as heretic. / Save for natural rivalry, there would not be / Such books of disputation as the '*Umad* or *Mughnī*.)[324]

The second version begins with the last line of the first version. It is given here with the translation of Nicholson:

Lau-lā 't-tanāfusu fī' d-dunyā la-mā wuḍi'at
Kutubu 't-tanāẓuri lā 'l-Mughnī wa-lā 'l-'Umadu
Qad bālaghū fī kalāmin bāna zukhrufuhū
Yūḥī 'l-'uyūna wa-lam tathbut lahū 'amadu
Wa-mā yazālūna fī Sha'min wa-fī Yamanin
Yastanbiṭūna qiyāsan mā lahū amadu
Fa-dharhumu wa-dunyāhum fa-qad shughilū
Bihā, wa-yakfīka minhā al-Qādiru 'ṣ-Ṣamadu

(No books of polemic had been composed – Mughnī or 'Umads – did not men with men / Strive panting after pelf. They have run neck high / In disputation, reared on baselessness / A dazzling monument of mere fine words; / And still they cease not ever,

north and south, / Drawing out syllogisms interminable. / Their vile trade let them ply: enough for thee / The omnipotent, the all-sustaining Lord!)[325]

The first version is obviously rationalist in sentiment, and the second traditionalist. In the first version, second verse, Maʻarri makes it quite clear that although believers were ordered (by the Koran) to make use of their reason, when any groups of them do so, they are held as heretical. The last line of the first version is understood as meaning that it is in our nature to dispute, natural rivalry gives rise to disputation, and books on the subject would not have been composed without it. In the second version, this same verse is given a different twist: there is rivalry among men, and we have the books on disputation as a result; but it has gotten out-of-hand, it has gone all too far; disputation has run amock throughout the land. But let those lost souls ply their trade, that is dialectic and disputation: for you and me, let it suffice that we believe in the Omnipotent, all-sustaining God.

The following verses of Maʻarri in Nicholson's translation illustrate the dichotomy between the traditionalists and the rationalists; he sees only two factions, without a third holding to a middle road:

Hafati 'l-Ḥanīfatu wa 'n-Naṣāra mā 'htadat
wa-Yahūdu ḥārat wa 'l-Majūsu muḍallalah
Ithnāni ahlu 'l-arḍi: dhū ʻaqlin bi-lā
dīnin, wa-ākharu daiyinun lā ʻaqla lah.

(They all err – Moslems, Christians, Jews and Magians. / Two make humanity's universal sect: / One man intelligent without religion, / And one religious without intellect.)[326]

These verses exude the sort of scepticism which an over-indulgence in disputation could produce throughout a long period of development.

Ibn al-Jauzi, in his *Tablīs Iblīs*,[327] censured what he considered to be the excesses of the jurisconsults:

The major portion of their effort is concentrated on acquiring the science of dialectic, their purpose being, they claim, to discover the right source for the legal prescription, the subtle points of the religious law, and the courses upon which the various legal opinions are based. If this claim of theirs were really true, they would have occupied themselves with all problems of the law without distinction. Instead, they busy themselves with the leading problems demanding much discussion, so as to make a show of their dialectical prowess, publicly, in the give-and-take of disputation. The disputation is arranged so as to deal with the great disputed questions, the disputant often being ignorant of the legal prescription applicable to a minor problem which is nevertheless of a more common concern.

Moreover, jurisconsults prefer to adduce analogical reasoning

as evidence in a question of law, rather than cite a hadith, so as to give free reign to their prowess in disputation. Were one of them to adduce a hadith as evidence, he would be scathingly censured by his peers; even though the correct practice would be to do so.

Jurisconsults spend their time on disputation, to the exclusion of the recitation of the Koran, of hadith, of the life of the Prophet and his companions, matters which could awaken the religious feeling such as disputation could never do. They neglect the positive law and the rest of the religious sciences. They engage in disputation for purposes other than the discovery of the truth; they even become angry when the opponent discovers it, and bend every effort towards refuting him, knowing full well that he is right. Their sole object is to defeat their adversaries and achieve leadership [riyasa], and to this end they are ready to go to extremes, to become angry, curse and revile the adversary. They look down on the hadith-experts, forgetting that hadith is one of the basic sources of the law, and they denigrate the discourse of the preacher. In their impatience to reach the summit, they issue legal opinions before reaching the rank of mufti, their fatwas going against the clear text of the scriptures.

d. Origin and Development of the Licence to Teach

1) Origin of the Concept of the Ijaza

The authorization to teach was tied primarily to the book. It guaranteed the transmission of authoritative religious knowledge. The authoritative character of the transmission derives ultimately from the Prophet, the seal of all prophets, chosen by God to receive the revelation, the religious knowledge (ʿilm) necessary for salvation, transmitted to him through the agency of the Angel Gabriel. This knowledge the Prophet passed on orally to his Companions (ashab, sahaba, pl. of sahib), and they to their Successors (tabiʿun), and they to their successors (tabiʿu 'l-tabiʿin), and so on, down through the centuries to the ulama, heirs of the prophets. Such was the transmission of hadith, accounts relating to the deeds, words and attitudes of the Prophet, called his Sunna. The vehicle of this transmission was the spoken word, recited, read aloud, as was the 'Recitation' itself, the Koran. The Koran and the Sunna are the two principal authoritative sources of religious knowledge in Islam.

The technical terms first involved with hadith derived from the verb samiʿa, to hear. The derivative term samaʿ came to mean the certificate of audition. This certificate was appended to a book, or other writing, certifying that the owner, and perhaps others along with him who were then also named, studied the materials under his direction. The master could also authorize the person or persons named to transmit the contents on his authority as author of the book,

or as one who was duly authorized to make the authorization.

The certificate of audition was called ijazat as-sama', or simply sama'. The elements involved in this certificate were: the certifier, musmi'; the reader or reciter, qari'; the auditors, sami'un (sing, sami'); and the writer of the certificate, katib, katib as-sama', katib at-tabaqa, muthbit as-sama'. Biographical notices often mention that a scholar was a writer of tabaqas (kataba 'ṭ-ṭibāq), which fact was meant as a testimonial to his trustworthiness, accuracy and usually good handwriting. The musmi' could himself be the author (mu'allif) of the work being studied; or he could be another scholar authorized to teach the book, in which case he cited his authority going back directly to the author, or through one or more authorized scholars intervening between the author and himself (sanad, isnad, riwaya). The qari', reader, was usually the person who was the most qualified to read the book, or recite it by heart. The auditors were cited in the certificate by the writer, katib, who gave the exact portion of the book studied by each auditor, if not studied equally by all. The writer was usually one of the students who could be relied on to give the exact names, the number of sessions and the place and dates involved.[328] Such a certificate of audition involved the reading of the text or its recitation from memory. This reading or recitation was expressed by two basic terms, one connected with the Koran, the other with hadith, both of which terms were closely interrelated and sometimes even synonymous: qara'a and sami'a.

The three radical letters, *qr'*, from which the word al-Qur'an, the sacred book of Islam, is derived, were also those of the most basic technical term of Muslim education and the most versatile; namely, the verb qara'a. It means to read aloud, to recite, especially the Koran, 'the Recitation'. The fourth form, aqra'a, means to make (someone) read aloud or recite, to teach. These verbs were used with regard to Koranic studies, as well as other subjects.

One 'read' a certain subject, in the sense of studying and mastering it. The verb qara'a was used with, and without, the preposition 'alā. For instance, qara'a 'l-madhhab wa 'l-khilāf ḥattā tamaiyaz (He 'read' the law of his school and that of others until he distinguished himself);[329] and qara'a 'l-fiqh 'alā (fulān) (He 'read' law under the direction of So-and-So);[330] both used in the sense of he 'studied'. The verb qara'a meant also to read aloud or recite *from memory*, as did the verb sami'a, used especially for the field of hadith, the other scriptural source of Islam. Both verbs, qara'a and sami'a, used in this sense, were accompanied with the preposition 'alā. Talamanki (d.429/1037) related an experience of his as follows: 'I entered Murcia and its scholars clung to me wishing to recite to me (yasma'ūna 'alaiya),[331] that is, to study under my direction, *Gharīb al-Muṣannaf*.[332] I said to them: "Look for someone to recite for you (yaqra'u lakum) while I

hold my copy of the book." They brought me a *blind man*, known as Ibn Sida, who recited the book to me (qara'ahū' alaiya) from beginning to end, and I was amazed at his memorization (ḥifẓih).'[333]

Since qara'a could also be taken in the sense of reading a text not from memory, other words were sometimes added to avoid ambiguity. Shafi'i was reported saying that he went to see Malik after having learned by heart the latter's work, *al-Muwaṭṭa'*. Malik told him to find someone to 'read' for him (man yaqra'u lak). Shafi'i answered: 'I shall do my own "reading".' Shafi'i continued the anecdote, saying: 'So I "read" (recited) the *Muwaṭṭa'* under his direction from memory' (fa-qara'tu 'alaihī 'l-Muwaṭṭa' hifẓan).[334] Al-Khatibi, in his youth, used to copy each day a certain amount of Ibn Faris's *Mujmal al-lugha*, commit it to memory (ḥafiẓa), then recite it to (qara'a 'alā) Ibn al-Qassar, until he had finished the book as regards both memorization and writing (ḥifẓan wa-kitābatan).[335] After memorization, a book was recited to a master. Zubaidi (d.379/989), the biographer of grammarians, said he heard al-Mus'abi asking Abu 'Ali ad-Dinawari (d.289/902), 'How did the grammarian Muhammad b. Yazid come to know the *Book* of Sibawaih better than Ahmad b. Yahya, Tha'lab?' The answer was, 'Because Muhammad b. Yazid recited it from memory to (qara'a 'alā) master-grammarians, whereas Ahmad b. Yahya recited it from memory to himself (qara'ahū 'alā nafsih)'.[336]

The qira'a, reading, could be done by the professor to the students, or by the student to the professor, while the other students followed the text being recited. In the latter case, the students were all being credited with the 'reading', though only one of them was doing the actual reading, preferably from memory. The professor in this case was doing the 'hearing', that is, the teaching, by following the recitation and correcting the text when necessary. Such, for instance, was the case with 'Abd al-Ghafir al-Farisi (d.529/1135) and his professor Abu 'l-Muzaffar as-Sam'ani, who often taught through the former's readings (qirā'ātī) which he preferred to his own readings (qira'at nafsih) to the students. Al-Farisi related: sami'a bi-qirā'ātī al-kathīr, wa-kāna rāghiban fī dhālik; qalla mā kāna yaḥḍuru majlisan illā wa-ya'murunī bi'l-qirā'a; wa-kānat qirā'ātī aḥabbu ilaihī min qirā'āti nafsih (He taught [literally: heard] much through my readings with which he was pleased. He rarely held a class without asking me to read; and he preferred my readings to his own.)[337] The term qira'a, from qara'a, to read, applies to both the student's reading to the professor, as well as the professor's reading to the student. When it was desired to point out clearly that the actual reading was performed by a certain person, additional words to that effect were used; as, for instance, the words bi-nafsih were added to qara'a: qara'a *Ṣaḥīḥ* Muslim bi-nafsihī 'alā ... (He himself read the *Ṣaḥīḥ* of Muslim (collection of hadith) under the direction of ...).[338] The term qara'a

'alā, meaning to recite from memory to someone, is also meant to study under his direction. Al-Jawaliqi (d.540/1145) studied lexicography under (qara'a 'alā) at-Tibrizi for seventeen years, so that he became the foremost expert in it; he then taught it (aqra'ahū, Form IV of qara'a) in the Madrasa Nizamiya, succeeding Tibrizi there in that field.[339]

The verb qara'a therefore meant to read, to recite, to recite from memory, to study. It was used primarily in connection with the Koran; but it was also used for other subjects, including those which had developed terms of their own; as, for instance, in law, the verb darrasa, and in hadith, the verb ḥaddatha, both used *without complements*. The verb sami'a (to hear) was used, in some of its meanings, synonymously with qara'a (to read). Sami'a was used twice in a passage where qara'a could easily have been substituted for it. This passage is discussed below.[340] Sami'a thus meant to recite from memory, as well as to hear, study, learn. On the other hand, the meanings of these two verbs diverged when the prepositions were not the same. Ibn Hamdan, in a biographical notice on Majd ad-Din b. Taimiya,[341] said of him: 'I was his fellow [ṣaḥibtuhū] in the Madrasa Nuriya after my return from Damascus, but took nothing in dictation from him [wa-lam asma' *minhū* shai'an], nor read, studied, under him [wa-lam aqra' *'alaih*]. I did, however, through his reading [or recitation from memory], study much under his cousin [wa-sami'tu bi-qirā'atihī 'alā 'bni 'ammih]. He was an excellent scholar in the law of his school and in that of others. I had frequent discussions with him and numerous disputations in the lifetime of his cousin and thereafter.'[342] Ibn Rajab then added: 'I found a certificate of audition [sama'] signed by Majd ad-Din b. Taimiya (d.652/1254)'; in other words, Ibn Hamdan did, indeed, study under Majd ad-Din b. Taimiya, not only under his cousin. Dozy corroborates this meaning of sama' by translating aurāq samā'ih as follows: Les recueils de notes écrites sous la dictée de ses professeurs (the collections of notes taken in dictation from one's professors).

There were readings (qira'a, pl. qira'at) for different purposes. In the following example, the qadi Abu Ja'far az-Za'farani (d.463/1071) was said to have made a copy of al-Khattabi's (d.386/996) *Ghārib al-ḥadīth.* Then, under one professor, he made a qirā'at samā', and under another professor, he made a qirā'at taṣḥīḥ wa-itqān. The first reading was to establish the fact of its memorization, the knowledge of it by heart; the second, to correct the text (tashih) and to embed the corrected text firmly in the memory, to master it (itqan).[343] There were other types of reading, among them, reading the text in order to comment on it and correct it (sharḥan wa-taṣḥīḥan).[344]

Ibn Abi Usaibi'a, biographer of philosopher-physicians, preserved the text of a sama' that he found on a copy of Ibn at-Taiyib's (d.435/

1043) *Commentary* on Galen. The *Commentary* was read under the author's direction and bore his signature attesting to the fact that the reading (qira'a) took place in Baghdad's hospital, al-Bimaristan al-'Adudi, on Thursday, the 11th of Ramadan, in the year 406 (22 February 1016). The biographer went on to say that most of Ibn at-Taiyib's works were copied from his dictation.[345] This example illustrates the inter-connection between sama' and qira'a, the latter being used here in the sense of sama'; the two terms are interchangeable. The causative forms of the two verbs, Forms II and IV, namely qarra'a / aqra'a, and samma'a / asma'a, mean *to teach.*

The above illustrations show further that qira'a was applied to the professor himself (cf. Sam'ani above), or to the student who actually did the reading, or to the student in attendance who was not reading, but who was following the reading or recitation in his own copy.

As jurisprudence developed with the legal practice of the jurisconsults, the type of authorization given for hadith was no longer adequate by itself. Law was a far more complex field than that of hadith, which was only one of the sources of jurisprudence. Other sources were involved, and another kind of methodology. The authorization therefore developed from its simplest form, namely attesting to the authoritative transmission of hadith, to a more complex one.

The terms relating to hadith began to show a distinction between mere memory, and comprehension: riwaya and diraya, a movement from mere ability to store hadiths in the memory, to the higher ability of understanding their contents and using them as materials for the elaboration of the religious law. In this sense, the term diraya was synonymous with the term which came to be used for law, fiqh: understanding, intelligence. The truly learned man was able not only to *carry*, *transmit* (riwaya, from rawā) the hadith, but also to understand it and make intelligent use of it (diraya, from darā), which was tantamount to fiqh, jurisprudence. Thus legal science, 'ilm al-fiqh wa-usul al-fiqh, was referred to also as 'ilm ad-diraya, the science of diraya.[346] The distinction between riwaya and diraya showed up in the biographical notices of the muhaddithun, one being pointed out as having a knowledge of hadith confined to riwaya, another as encompassing both riwaya and diraya; or a jurisconsult would be described as strong in dialectic, but weak in his knowledge of hadith.

Hadith-experts and jurisconsults had much in common, acting as they did on a common front against those who put reason above faith. This common front was symbolized by a terminology of rapprochement, already noted in the terms diraya and fiqh, as well as in the phrase fiqh al-hadith, meaning the science of hadith (on the analogy of fiqh al-lugha, the science of lexicography), bringing hadith (or lugha) as a science up to the level of fiqh, by association. A certain

amount of zealous partisanship separated the dedicated muhaddith from the dedicated jurisconsult, an instance of which can be seen in Tamimi's four lines of poetry already cited.[347] Another interesting instance may be seen in a quarrel over whether an authorization must be written and signed by the master, or would it be legitimate when written by the person authorized.

Ibn al-Madhhab (d.444/1052) was the object of the quarrel. An authorized transmitter of Ibn Hanbal's *Musnad*-Collection of hadiths, he was taken to task by al-Khatib al-Baghdadi who, though he acknowledged his authority as transmitter, took exception to Ibn al-Madhhab's authority regarding an indefinite number of ajza' (pl. of juz', parts) of the *Musnad*. At the end of each juz', Ibn al-Madhhab had appended his own name attesting to having received the authorization from Ibn al-Qati'i (d.634/1236).[348] Ibn Nuqta[349] defended Ibn al-Madhhab by taking exception to Baghdadi for not identifying the parts in question,[350] which implied acceptance of the principle that the part should have been signed by the authorizing muhaddith.

On the other hand, Ibn al-Jauzi defended Ibn al-Madhhab[351] on the basis that only common, ordinary muhaddithun (awāmm al-muḥaddithīn) insist that the master should sign the authorization. In other words, this principle is not required by hadith-experts who are learned in the law. Ibn al-Jauzi then said:[352]

> This does not call for censure; since once it is known for certain that he learned [heard] the book, it becomes permissible for him to write his certificate of audition [sama'] in his own hand, in order to enhance the importance [probative value] of books. It is a cause for surprise to see how these hadith-experts allow one to say, orally, 'So-and-So informed me . . .' [in reference to an authority from whom a hadith is received orally] but refuse him to write his certificate of audition in his own hand . . .

In other words, if the transmitter of a hadith was allowed, himself, to attest to the authenticity of his authority to transmit the hadith, then the transmitter of a book should also himself be allowed to do the same with the book.

Elsewhere, Ibn al-Jauzi cites the qadi al-Arsabandi who had made, in this regard, a statement surprisingly modern in tone: 'In my opinion, anyone who is the author of anything has in effect given his authorization to anyone who transmits his work on his authority'.[353] But even if the book was authenticated as that of the author, it remains true that, in Islam, the authorization itself had to be given from person to person. Transmitting the knowledge of a book that had been learned by oneself, and for which no authorization had been given, did not constitute a legitimate authorization to transmit its contents. The numerous certificates of audition written and signed by the

authors of books, or by persons duly authorized in succession, attest to the perennial personalism of the Islamic system of education.

2) Development of Fiqh

The development of fiqh from hadith, that is, the movement from riwaya to diraya, began gradually at an early date.[354] The family in-fighting was brought to a head after the Inquisition, as illustrated by the cause célèbre of Tabari, the famous historian, muhaddith and jurisconsult, who dismissed Ahmad b. Hanbal as a mere muhaddith and not a jurisconsult. Tabari was attacked by the followers of Ibn Hanbal. The Hanbali school of law emerged after the Inquisition, when Tabari's school of law was in the making. The rivalry was keen. The schools of law were in a state of flux,[355] and the lines of demarcation between hadith and fiqh were still blurred. The wording of some of the notices in biographical sources is clear evidence that the fields of hadith and fiqh were closely interrelated, and that fiqh was in the process of emerging as an independent field.

Abu Muhammad al-Bazzaz (d.293/906) is cited in his notice as a sahib of Abu Thaur the Jurisconsult: 'He heard hadith from a group of muhaddithun and he was in *possession* of the fiqh of Abu Thaur.... He was trustworthy'. Notice that the terms used relate to hadith except the statement about fiqh; and here the statement refers to *possession*, that is, knew it by heart: kāna 'indahū fiqhu Abī Thaur,[356] as one would have hadith in one's possession.

Speaking of the traditionist an-Nasa'i (d.303/916), compiler of one of the six canonical collections of hadith, the notice states: 'He was an imam in hadith, trustworthy, reliable, knew the Koran by heart, *a jurisconsult*'.[357] The last epithet was added to show that Nasa'i was one who understood – did not merely memorize – the hadith and could derive the law from it.

Ibn al-Jauzi was critical of the muhaddithun who were merely rawis, relaters, transmitters. In his *Talbīs Iblīs*, he castigated those among them who did not understand the hadiths they had compiled, and were so ignorant of the law that they had to refer to their own students of hadith who were also law students, in order to be enlightened as to their legal duties.[358] When Ibn al-Jauzi came to write the notice on Tabari he did him justice, in spite of the troubles Tabari had with the Hanbalis because of his dubbing Ibn Hanbal as a mere hadith-expert. Ibn al-Jauzi, a Hanbali, nevertheless described him in the following terms: '[Tabari] amassed fields of knowledge such that he was at the forefront of scholars of his day; he knew the Koran by heart, with insight into its interpretation, was a scholar regarding the Sunna of the Prophet, a jurisconsult with a thorough knowledge of the legal prescriptions and of the divergences of opinion among the doctors of the law.'[359]

Rudhbari (d.322/934) was quoted listing his teachers as follows:

'My professor, in sufism, was Junaid; in *hadith and fiqh*, Ibrahim al-Harbi; and in grammar, Tha'lab'.[360] Ibrahim al-Harbi (d.285/898) was described as a scholar of the standing of Ahmad b. Hanbal, whose fields were asceticism, *fiqh and hadith*, and language and literature.[361] Abu 'Abd Allah al-Hashimi (d.323/935) was 'a trustworthy hadith-expert who followed the *school of law* of Shafi'i'.[362] And Abu Nu'aim al-Astarabadhi (d.323/935) was in the forefront of learned men in *hadith and fiqh*.[363]

It was after this period, and beginning with such jurisconsults as Abu 'Ali at-Tabari, about mid-fourth/tenth century, that the terminology used in the notices began to be specialized in the law, and such terms as khilaf, fiqh, usul al-fiqh, jadal, and the ta'liqa began to be used, their use increasing in frequency as the years went by.[364] This development was due in great measure to the Shafi'i school of law, Shafi'i being the first to bring together the disparate fields of law that go to make up the science of usul al-fiqh. The line of descent from Shafi'i for this development of the law is quite clear: Shafi'i (d.204/820), to al-Muzani, to al-Anmati, to Ibn Suraij, to Ibn Abi Huraira and Abu 'Ali at-Tabari. Ibn Suraij came as the culmination of the effort begun by Shafi'i and his usul al-fiqh, carried on by the *Epitome* on law of al-Muzani whom Shafi'i called 'the defender of my doctrine' (al-Muzanī nāṣiru madhhabī), and through al-Anmati, to surge forth with Ibn Suraij, hailed as even a greater jurisconsult than al-Muzani. From Ibn Suraij, it passed on to Ibn Huraira, author of the *Commentary* on the *Epitome* of al-Muzani, and to Abu 'Ali at-Tabari, who 'reported' with a ta'liq on the *Commentary*.

As already mentioned, the Shafi'is are to be credited with the writing of works on khilaf and jadal, with jurisconsults such as al-Qaffal ash-Shāshī, a disciple of Ibn Suraij, and author of a work on jadal, and Abu 'Ali at-Tabari, with his 'pure khilaf' (al-khilaf al-mujarrad) entitled *al-Muḥarrar fī 'n-naẓar*, on disputation.

Legal studies may thus be said to have come into their own by the first half of the fourth/tenth century. The ta'liqa was a cornerstone in the development of legal studies leading to the rank of mufti. It was at this point also that the colleges of law began to multiply, with Badr b. Hasanawaih who popularized the foundation of the masjid-khan complexes, followed by Nizam al-Mulk who popularized the foundation of madrasas. These institutions came into existence because the subject matter they were set up to teach had already become established as an independent field of study.

The term ijaza was first coined to authorize the transmission of hadith. When used in the absolute, that is, without a complement, it referred to hadith in particular. But with legal studies, it began to be used with complements in order to distinguish it from the hadith ijaza. The authorizations for issuing legal opinions, or for teaching

the law, or both, were designated as follows: al-ijaza bi 'l-fatwa (or, bi 'l-ifta'), al-ijaza bi 't-tadris, al-ijaza bi 'l-fatwa (or, ifta') wa-'t-tadris, al-ijaza bi 't-tadris wa-'l-fatwa (or, ifta').

One thing remained constant throughout the centuries. No matter how sophisticated the ijaza became,[365] whether it authorized one book, or a whole repertoire of hadiths, or the teaching of law, or the issuing of legal opinions, it remained an authorization made by one person, or if by more than one, by one at a time. The scholar receiving it could go on to collect other authorizations from other masters; and he could do this for the same book or books, or for teaching law (based on books studied, as well as disputation), or for issuing legal opinions.

Memory, so important in the teaching of hadith (tahdith), kept its importance in the teaching of the law (tadris). In fact, while it was permissible to dictate hadiths from a book, from written matter, in law the master jurisconsult was supposed to know his materials by heart. Ibn Hajar al-ʿAsqalani reported as a novel practice that one of his biographees 'used to teach law from a book!'[366] Rather the master jurisconsult had to know his law by heart, much the same as a virtuoso musician had to know his music, in order the better to concentrate on the rendition. To teach from a book, therefore, would mean that the professor was tied down to the book, his mind lacking the freedom it needed to rise above the mere text, the knowledge of whose parts should be taken for granted, in order the better to be able to synthesize them into something original.

3) Authorization to Teach Law and Issue Legal Opinions

The chief goal of Islamic education was the training of the jurisconsult, the mufti; for the Muslim believer, the layman, had to have recourse to an authority on the law which covered all phases of his life, civil as well as religious.

The early importance of the jurisconsult is illustrated by the appellation given to the year 94 of the hijra (712-13 of our era), 'the year of the jurisconsults (sanat al-fuqaha')', explained as the year in which a group of important jurisconsults died, a great loss to the Muslim community. Symbolic also is the appellation 'the seven jurisconsults (al-fuqaha' as-sabʿa)', contemporaries who, as fellow residents of Medina, the 'City of the Prophet', issued legal opinions.[367] Other jurisconsults are pointed out as great muftis of their day, who died in the first half of the second/eighth century: Sulaiman al-Ashdaq of Damascus;[368] Qais of Mecca;[369] Muhammad b. Yahya al-Ansari of Medina, who had a halqa for fatwa;[370] Zaid al-Azdi of Cairo;[371] Zaid al-ʿAdawi of Medina, who also had a halqa for fatwa.[372]

The halqa for legal opinions of a master jurisconsult consisted of disciples or colleagues, or both, sitting together for the actual practice of discussing the law and arriving at legal opinions that had been

solicited. One of the jurisconsult disciples of the halqa of Zaid al-'Adawi described it in the following terms: 'We were forty jurisconsults in the fatwa-halqa of Zaid b. Aslam (al-'Adawi), the least of our traits being that we shared with one another our worldly goods',[373] most likely a reference to compensation received for issuing legal opinions, when there was compensation. Muhammad b. 'Ajlan (d.148/365) was said to have had a halqa for fatwas in the very Mosque of the Prophet in Medina.[374]

There was no particular limit of time required for preparation as a jurisconsult qualified to issue legal opinions. The books on theory spoke of the obligation to do so, but also warned against rushing into the practice. The authorization was issued usually to students at an advanced age, in their thirties, forties or even later. But some received it at an early age. The great Syrian jurisconsult al-Auza'i was said to have first issued legal opinions at the age of thirteen.[375] The eponym of the Maliki School of law, Malik b. Anas (d.179/795) was quoted as saying that he did not issue a single legal opinion until he had been authorized to do so by seventy jurisconsults, 'and it seldom happened that a learned man under whom I had studied law would die before having applied to me for a legal opinion'.[376]

Al-Hiql b. Ziyad (d.179/795) of Damascus, secretary of the great Auza'i, became in turn a master jurisconsult, being the jurisconsult who knew best the great master, his course of law and his legal opinions.[377] The muhaddith and mufti of al-Jazira, 'Ubaid Allah ar-Raqqi (d.180/796), was described as a jurisconsult whose legal opinions were unopposed,[378] a reference to his undisputed leadership and authority. The eponym of the Shafi'i School of law studied under the great jurisconsult of Mecca, Muslim b. Khalid (d.294/907), who authorized Shafi'i to issue legal opinions when he was but fifteen years of age.[379]

Taj ad-Din as-Subki was authorized to teach law and issue fatwas at the age of eighteen or less. His professor Shams ad-Din b. an-Naqib died in 754 H. when Subki was eighteen years of age. Ibn Hajar al-'Asqalani remarked that Subki had received the authorization before he had reached the age of twenty.[380] A contemporary of Ibn Taimiya, Sadr ad-Din b. al-Wakil al-Umawi, issued legal opinions at the age of twenty. He was a skilled disputant with a retentive memory and was said to be the only one who could oppose Ibn Taimiya in a disputation.[381] Fakhr ad-Din b. Katib Qutlubak (d.751/1350) was authorized to issue legal opinions at the age of twenty-three.[382]

In all these and other such cases the ages cited are understood to be out of the ordinary. Since the authorization was personal in character, it depended on the professor issuing it. Some masters were not free with their authorizations. The jurisconsult Abu Ishaq Ibrahim b.

Yahya ad-Dimashqi (d.732 / 1332) used to make it very difficult for the student to obtain an authorization, and he frequently sent a candidate away, declaring him unqualified.[383] Ahmad b. Hamdan al-Adhru'i (d.783 / 1381) was another jurisconsult who very rarely gave an authorization to issue legal opinions. He himself was widely known for his fatwas and was even solicited regularly by a mufti of distinction to give answers to questions which the latter would then adopt in issuing his legal opinions.[384]

Legal opinions were open to discussion and argumentation as was implied in the case of ar-Raqqi (d.543 / 1149) whose opinions were said to have gone unopposed, so great was his authority as a jurisconsult that others in his locality could not find valid arguments to advance as objections. The halqas for legal opinions were used as arenas for argumentation and debate leading to those opinions winning the consensus of the assembly of jurisconsults.

From the biographical notices on jurisconsults of the fourth / tenth and fifth / eleventh centuries a pattern emerges clearly showing three functions of the master jurisconsult: the teaching of law (tadris), the issuing of legal opinions (ifta') and disputation (munazara).

Hibat Allah b. Muhammad of Baghdad (d.439 / 1047) studied law under Abu Ya'la b. al-Farra', became distinguished in the knowledge of the law, in disputation, and in his legal opinions (anjaba, wa-aftā, wa-nāẓara) succeeding to the study-circle of his father.[385] Abu 'l-Fath al-Qurashi (d.444 / 1052) so excelled in the law that he became the pivot and pole of legal opinions, the teaching of law, and the activity of disputation (ṣāra 'alaihī madāru 'l-fatwā wa-'t-tadrīsi wa-'l-munāẓara).[386] The centenarian jurisconsult Abu 't-Taiyib at-Tabari was said to have been active to the end of his life, escaping senility, and joining the jurisconsults in discussions on fatwas, correcting their mistakes (yuftī ma'a 'l-fuqahā'i wa-yastadriku 'alaihimi 'l-khaṭa').[387] And Ibn 'Amrus (d.452 / 1060) so excelled in his legal opinions that he became leader in that field in Baghdad (intahat ilaihī 'l-fatwā bi-Baghdād).[388]

The professorship of law and the muftiship were definite levels of achievement. Abu Muhammad at-Tamimi (d.488 / 1095), recalling the occasion of the funeral of the caliph al-Qa'im, in 467 / 1075, in which his colleague the Sharif Abu Ja'far, first cousin of the caliph, was given the honour of performing the funeral prayers, said that he never envied anyone more than Abu Ja'far on that day, all the more since he himself had long succeeded to the rank of professor of law and was the caliph's ambassador to the princes of the realm (wa-qad niltu martabata 't-tadrīsi . . . wa-'s-safārati baina 'l-mulūk).[389]

Al-Birzali (d.739 / 1339), speaking of Salim b. 'Abd ar-Rahman al-Qalanisi (d.726 / 1326), said that he was a distinguished jurisconsult who had attained the ranks of professorship of law and the

muftiship (balagha rutbata 't-tadrīsi wa-'l-futyā).[390]

As in the case of an authorization to teach a book or books, the authorization to give fatwas came from a duly authorized jurisconsult. Here again, the person receiving it would obtain authorizations from other professors and thus collect a number of them, the more the better. The historian Ibn Kathir declared of Jamal ad-Din b. al-Qalanisi (d.731/1331) that the latter was among those who had authorized him to issue fatwas (wa-huwa mimman adhana [=ajāza] lī bi 'l-iftā').[391] This authorization was sometimes combined explicitly with the authorization to teach law (ajāzahū bi 'l-iftā'i wa-'t-tadrīs, he authorized him to issue legal opinions and to teach law).[392] However, the authorization to issue fatwas usually presupposed a level of knowledge such that the candidate had already proven himself capable of teaching law. It is said of the jurisconsult Nasir ad-Din b. al-'Attal (d.775/1374), for instance, that 'he was authorized to issue legal opinions, and he used to issue them and teach law' (kāna ma'dhūnan la-hū bi 'l-iftā', wa-yuftī wa-yadarrisu fī 'l-fiqh).[393]

The authorization to teach law and issue legal opinions was given after an examination had taken place. The examination, needless to say, was oral. The exam took place on particular books that had been studied by the candidate. Ibrahim b. Makram ash-Shirazi (d.874/1470) was authorized to teach law and issue fatwas by two professors; one of them had examined him on several questions in several fields. He was also examined by other professors on particular books and was authorized, as a result, to teach those books.[394] Bribery was sometimes attempted in order to obtain the authorization to teach law. The jurisconsult Abu 'l-'Abbas b. al-Kamal at-Tamimi (d.872/1468) was approached by a young man of a well-to-do family requesting such an authorization after he had sent a present to the professor who immediately returned it and refused to give the authorization.[395] Competition and rivalry was rife among jurisconsults. Each mufti wanted his fatwas to be based on the most convincing arguments in order to win over his opponents or silence them. His goal was to reach the top rung of leadership (riyasa) as mufti.[396] To do this he had to excel as a disputant, and he had to defeat rival disputants. The texts are quite clear as to the rivalry which this situation produced. Al-Haruni was said to have been a jurisconsult who frequently opposed his peers in his legal opinions (wa-kāna . . . kathīra 'l-mukhālafati li-aqrānihī fī 'l-fatwā).[397]

The Maliki jurisconsult Ahmad b. Muhammad al-Maghrawi (d.820/1417) was a rival of the famous Ibn Khaldun. He issued legal opinions opposing those of Ibn Khaldun, with whom he regularly engaged in disputations.[398]

The following anecdote illustrates a thesis defence which obtained

for the student the licence to teach law and issue legal opinions. The above-mentioned Maghrawi tells of his attending the disputation session of the jurisconsult Ibn ʿArafa who said to his disciples one day, after having given the determination (taqrir) at the end of a disputation: 'Who will offer to oppose this determination and do justice to it?' The professor was inviting his disciples to oppose him, the master, with all their intellectual skill, treating him as their equal. One of them was entrusted with the task by his classmates. The disputation between master and disciple went on for three days during which the professor did his best to unnerve the disciple, going so far as to use rude and abusive language, but the disciple held his ground firmly, saying: 'Such language will not refute me; you might try some other way'. Finally, the professor, giving up the struggle, said: 'You were right in all that you said', and gave him the authorization to issue legal opinions. One of the disciples attending the three-day disputation complained to the professor that he could have given the authorization on the first day, sparing them the loss of time. The professor's answer was that he simply wanted to ascertain whether the disputing disciple would remain firm, or waver, in his argumentation.

The anecdote goes on to relate that later, when a professorship of law became available, the professor gave his testimony that the disciple stood alone as the candidate most worthy of the post, to which he was then appointed. The master and the other jurisconsults attended the inaugural lesson.[399] Thus the disputation was the final test a candidate had to pass in order to obtain his licence. He then was eligible for a teaching post in the locality in which he had proved himself a disputant. The disputations he won were proof of his ability to defend his opinions, and therefore to teach law and issue legal opinions. In illustration, there is, for instance, the stipulation made by the founder of a Shafiʿi Madrasa in Aleppo indicating that the candidate to be chosen as professor of law in his foundation had to be a jurisconsult who had so mastered the field of Shafiʿi law as to be qualified to issue legal opinions that could be followed in that school of law (wa-sharaṭa an yakūna 'l-mudarrisu shāfiʿīya 'l-madhhab, mimman aḥkama madhhaba 'sh-Shāfiʿī, bi-ḥaithu ṣāra ahlan li-an yuʿmala bi-futyāhū fī madhhabi 'sh-Shāfiʿī).[400]

Chapter 3

THE SCHOLASTIC COMMUNITY

I. PROFESSORS

1. Designations

The terms mudarris and shaikh were used to designate the holders of the topmost teaching level. Mudarris, when used *without a complement*, designated the professor of law; whereas shaikh was generally used for professors of all other fields: Koranic science; hadith; grammar, including the literary arts; Sufism; and all fields of the 'foreign sciences'; the complement designated the field concerned.

The professorship of law was alone designated by the term tadris, its plural appearing later as tadaris.[1] All other professorships were referred to as mashyakha; for instance, mashyakhat al-Qur'an, mashyakhat al-hadith, mashyakhat an-nahw, mashyakhat at-tasauwuf, for the Koranic sciences, hadith, grammar, and Sufism, respectively. The terms tadris and mudarris, used absolutely, *without complements*, were reserved for the field of law.

2. Status in the Community

a. Importance of the Professorial Post

The statement of Ibn Khaldun, quoted by Hajji Khalifa, that the 'carriers of knowledge' in Islam were mostly non-Arabs ('ajam), was not shared by the early scholars in Islam. Ibn Khaldun had said that scholars in all fields of knowledge, whether religious or secular, were for the most part non-Arabs, and those who were Arabs in their genealogy were non-Arabs in their mother tongue. The reason, according to Ibn Khaldun, was that Arabs were so taken up with seeking power under the Abbasid dynasty, that they had little time to spare for seeking knowledge, besides the fact of their aversion for the crafts and professions to which category the fields of knowledge belonged.[2]

The terms used by Ibn Khaldun for the goals sought by Arabs of the 'Abbasid dynasty are riyasa and mulk. The history of the 'Abbasid period when dealing with riyasa shows Arabs and non-Arabs equally in search of mulk (power, dominion, sovereignty). It also shows riyasa, leadership, was sought, both in matters of dominion as well as knowledge, by Arabs as well as non-Arabs – for both fields of endeavour made social mobility possible. Indeed, the field of knowledge appears

the one favoured by social climbers if only for the fact that it was the less perilous of the two. Very early in the Abbasid period we have the statement of an Arab, of the tribe of Shaiban, the Kufian Abu 'Amr Ishaq b. Mirar ash-Shaibani (d.213/828), exhorting the youth to seek knowledge 'for education makes it possible for the poor to tread on the carpets of kings!' (ta'allamū 'l-'ilm, fa-innahū yūṭi'u 'l-fuqarā'a busuṭa 'l-mulūk).[3]

The place of the professor in the community appears clearly as one of great honour. His honoured status was evidenced by the development of the inaugural lecture, accompanied by the attendance of government officials and the bestowal of robes of honour.

b. Inaugural Lectures

Professorial inaugural lectures came into prominence somewhere around the middle of the fifth/eleventh century. Before this, it was already customary to attend the lectures of a visiting scholar passing through Baghdad, often on his way to Mecca to perform the pilgrimage. Lectures by visiting scholars were well attended; so also were the disputations that took place frequently. A great number of halqas were devoted especially to sessions of disputation and the issuing of legal opinions, regularly held on Fridays, after the religious service in the great congregational mosques. As previously mentioned, many of these disputations had their regular sparring partners and were the delight of the public who attended as spectators. Attendance was all the more interesting when the disputation involved visiting scholars from other parts of the realm. This custom of attending the lecture of a visiting scholar was already in existence before the advent of the two great madrasas of Baghdad, the Shrine College of Abu Hanifa and the Madrasa Nizamiya. Ibn 'Aqil related that in his youth he attended a disputation engaged in by the visiting professor, Imam al-Haramain al-Juwaini, who first disputed with Abu Ishaq ash-Shirazi, and then with Abu Nasr b. as-Sabbagh; all three were of the Shafi'i school of law. These disputations took place in 447/1055, the year that Baghdad changed hands from the Buwaihids to the Saljuqs. Ibn 'Aqil, then sixteen years of age, cited as one of the subjects of disputation Juwaini's theory of divine knowledge denying God's knowledge of the particulars, limiting it to the universals.[4]

In 457/1065, the Hanafi jurisconsult, Mas'ud ar-Razi, convened a study-circle in the Mosque of al-Mansur. It was in that year that work was begun on the construction of the two madrasas, inaugurated two years later. This visiting professor's lecture was attended by the chief qadi and the shuhud-notaries, among others. Among those invited by the chief qadi ad-Damaghani were Qadi Abu Ya'la b. al-Farra' and Sharif Abu Ja'far b. Abi Musa, but they refused and did not leave their own study-circles in order to attend.[5] No explanation for the refusal was given by the chronicler; but it is indicative of the fact that

attendance at such a lecture was a sign of respect which those who refused to attend were not willing to show, either for reasons attaching to the scholar himself, or his mission and those he represented.

The custom of attending the lectures of visiting scholars goes back a long way. But the inaugural lesson or lecture of a professor just appointed to a chair appears as an extension of such ceremonies for dignitaries of the ruling power, such as wazirs and chief qadis. The professor of law often served as ambassador to princes in other parts of the Muslim realm, as well as Byzantium. His training as a disputant made him especially qualified for such missions. Both the chief qadi (qadi 'l-qudat) and the professor of law were scholars of the religious law. The inauguration was for the purpose of honouring them, indicating the importance accorded their positions by the governing power.

The appointment of a chief qadi was accompanied by a ceremony during which the deed of investiture ('ahd) was read publicly. The ceremony was attended by the grandees and notables of the dynasty, and the leading scholars of the law. On such occasions honorific titles (laqab) and robes of honour (khil'a) were bestowed upon the incumbent. These ceremonies in honour of the chief qadis were often mentioned in the chronicles.[6] Ceremonies of this nature were also held for wazirs as well as other government officials.

A new professorship of law, in the fifth/eleventh century, was heralded by an inaugural lecture or a disputation attended by government and scholarly dignitaries, as well as by students of law. Abu Nasr b. as-Sabbagh gave an inaugural lecture when he was appointed as professor of law in the Madrasa Nizamiya in Baghdad, in the place of Abu Ishaq ash-Shirazi, who did not show up.[7] The text regarding Ibn as-Sabbagh mentions a solemn session during which a disputation took place, attended by the dignitaries, and after which, the people dispersed. The first distribution of daily rations of food was then made to the students of law of the endowed college.[8]

In 461 H., two years after the inauguration of the Madrasa of Abu Hanifa, its first professor Ilyas ad-Dailami died and, in his place, Nur al-Huda az-Zainabi (d.512/1118) was appointed. This appointment was made by a committee of Hanafi trustees and the inaugural lecture was attended by the Hanafi dignitaries.[9]

When Ghazzali, in 484/1091, was sent to Baghdad by Nizam al-Mulk to grace the chair of Shafi'i law at the Madrasa Nizamiya, Ibn'Aqil and al-Kalwadhani, both professors of Hanbali law, were among the dignitaries who honoured him by attending his inaugural lecture.[10] The language used in reporting these inaugural lectures points to the importance of their ceremonial nature. The professor took his seat in the gathered assembly (jalasa), and persons of importance attended (ḥaḍara) his first lesson or lecture on law (tadris).

In the month of Rajab 498 (March–April, 1105), the wazir Sa'd al-Mulk attended (ḥaḍara) what appears to have been the inaugural lecture (tadris) of the Shafi'i jurisconsult al-Kiya al-Harrasi. He made a special visit (qaṣada) to the Nizamiya Madrasa to do so, 'in order to inspire the students with an interest for learning'.[11]

In 504/1110, Ibn ash-Shajari (d.542/1148) occupied the professorial chair (jalasa) in the study-circle of the grammarians (halqat an-nahwiyin) in the Mosque of al-Mansur, and his inaugural lecture was attended by the grandees (wa-ḥaḍara 'indahū 'l-akābir).[12] This same year, in Sha'ban (February–March, 1111), Abu Bakr ash-Shashi (d.507/1114) assumed the professorial chair (jalasa . . . yudarrisu) in the Madrasa Nizamiya, and was attended by the Wazir of the Sultan and the dynasty's ruling officials (wa-ḥaḍara 'indahū 's-sulṭān wa-arbābu 'd-daula).[13] Al-Kiya al-Harrasi had died and ash-Shashi was appointed his successor.

The inaugural lecture of Abu 'n-Najib as-Suhrawardi (d.563/1168) in 531/1137 was attended by a group of jurisconsults and qadis (ḥaḍara 'indahū jamā'atun mina 'l-fuqahā'i wa 'l-quḍāh). He was said to have assumed his chair to teach law (jalasa . . . li 't-tadrīs), giving an inaugural lecture.[14]

In Jumada II, 540 (November–December, 1145), Yusuf ad-Dimashqi (d.563/1168) assumed the chair to teach law (jalasa li 't-tadrīs) in the madrasa founded by Ibn al-Ibari in the Bab al-Azaj quarter of Baghdad's East Side. In attendance were the chief qadi, the treasurer, and the ruling party of the dynasty.[15]

The terminology was modified for Rajab 566 (March–April, 1171) when Ibn Nasir al-'Alawi was appointed to the professorship of law in the sultan's Madrasa which had been occupied by al-Yazd (d.571/1175). The verb used was wulliya, to be entrusted, charged, with the administration, to be appointed to a post with complete authority. The chief qadi and others were in attendance.[16]

In 567/1171, Abu Mansur b. al-Mu'allim was given (u'ṭiya) the Madrasa of the Sultan Mahmud (sultanate: 485-7/1092-4), which had been that of al-Yazdi. The new appointee, being completely in charge, then hired as his substitute (istanāba, na'ib) Abu 'l-Fath b. az-Zinni (d.568/1173), who was attended by a group of jurisconsults. The substitute-professor (na'ib) inaugurated (iftataḥa) his (substitute-) professorship (tadris) with a lecture, the opening statement of which was: 'A faction of theologians profess that God does not exist', a subject which alienated his audience. The next matter he treated was a disputed question of Shafi'i, which he did without citing him. This served only to further aggravate the situation. The scandal he provoked reached the ears of the wazir, who was about to have him paraded in disgrace throughout the city, when the professor in charge, Ibn al-Mu'allim, intervened successfully on his behalf.[17]

In the inaugural lecture, the new professor was not limited to one subject alone; he could display the breadth of his knowledge by dealing with a multiplicity of subjects. For instance, Ibn al-Jauzi, in an autobiographical note, tells of his inaugural lesson at the beginning of 570 / August, 1174, in his madrasa on Dinar Road. 'On Sunday, the 3rd of Muharram (570 H., 4 August 1174), I began to deliver the inaugural lecture (ilqā' ad-dars) in my madrasa on Dinar Road. On that day, I delivered fourteen lessons in various fields of knowledge' (wa-fī yaumi 'l-aḥadi thālitha 'l-Muḥarrami 'btada'tu bi-ilqā'i 'd-darsi fī madrasatī bi-Darb Dīnār; fa-dhakartu yauma'idhin arbaʿata ʿashara darsan min funūni 'l-ʿulūm).[18]

Another instance of the multiple-lesson inaugural lecture was that delivered in 874 / 1470 by Zain ad-Din al-ʿAjluni (d.878 / 1473) who had been appointed as substitute-professor in the Madrasa Shamiya Extra-Muros. He dealt with various topics of positive law (fiqh), from the chapter on sacrifices up to the chapter on vows.[19] Although the language of the source is not explicit, it would appear that he did this without reference to the text; at least, this was in the best tradition of teaching law, as one may gather from Subki's *Muʿīd an-niʿam*.[20]

In 598 / 1201, Majd ad-Din Yahya b. ar-Rabiʿ was appointed to the professorship of the Madrasa Nizamiya, robes of honour bestowed upon him, and his inaugural lecture was attended by the high officials of the ruling dynasty 'as was the custom on such occasions' ('alā jārī 'l-ʿādati fī dhālik). He had previously functioned as substitute-professor of law, but now held independently both the professorship of law and the mutawalliship of the college (wa-qad kāna yanūbu 't-tadrīsa bi-hā fa-ṣāra mustaqillan naẓaran wa-tadrīsan).[21]

The biographer and jurisconsult Abu Shama throws similar light on the inaugural lecture. He says that he succeeded al-Harastani (d.662 / 1264) to the professorship of Dar al-Hadith al-Ashrafiya and that his inaugural lecture was attended by the chief qadi and the notables of the city (Damascus), professors of law and of hadith, and others. He lectured on the introduction he had written for his work *al-Mabʿath*, and the hadith cited there, along with the chain of transmitters, and on the science of hadith, supplementing the lecture with materials drawn from other sources.[22]

The Iqbaliya Madrasa was founded in the year 628 / 1231 in Suq al-ʿAjam in Baghdad, by Iqbal ash-Sharabi (d.653 / 1255), who attended the inaugural lecture. The historian Ibn Kathir, without giving the name of the professor, said that the inaugural lecture was attended by a large audience including the professors of law and muftis of the city. Sweetmeats were prepared in its courtyard for those in attendance, and quantities of it were carried to all the madrasas and ribats of the city. The founder made provision in his deed of foundation for twenty-five students of law with stipulated daily

stipends, sweetmeats on festival days, and fruits in their various seasons. On the day of the inauguration, he bestowed robes of honour on the professor of law, on the repetitors, and on the students of law.[23]

It will be noticed that the banquet was given by the founder, not by the professor whose name was left unmentioned. This was also the case in 698 / 1299 in the Madrasa Dawudiya, when a banquet was given by the founder on the occasion of the inauguration of his foundation, a madrasa cum dar al-hadith cum ribat. The professorship (mashyakha) was given to 'Ala' ad-Din b. al-'Attar (d.724 / 1324), and his inaugural lecture was attended by the qadis and notables of the city.[24]

Attendance at an inaugural lecture was, among other things, indicative of approval of the choice for the college's professorship. The very fact that the biographers point out that the inaugural lesson was well attended would seem to imply that such was not always the case. For instance, when the famous Shafi'i hadith-expert Jamal ad-Din al-Mizzi (d.742 / 1341), in 718 / 1319, succeeded Kamal ad-Din b. ash-Sharishi, who had died that year, to the professorship of Dar al-Hadith al-Ashrafiya, his inaugural lecture was very poorly attended. His son-in-law and biographer, Ibn Kathir, commented on the affair, saying that none of the notables attended because some ulama did not approve of his appointment to this post. In this passage, Ibn Kathir did not give the reason for their disapproval, but confined himself to stating that no one among Mizzi's predecessors to the post was more worthy of it than he, nor was there a greater muhaddith. Ibn Kathir went on to say that Mizzi had no need to concern himself with their absence; he was better off without them.[25]

The inaugural lesson did not necessarily treat of the principal subject for which the institution was founded; it could be in one of the Islamic sciences or their ancillaries. For instance, in the Madrasa Shamiya Extra-Muros, the jurisconsult 'Ala' ad-Din as-Sairafi (d. 844 / 1440) delivered his inaugural lecture, as professor of law, by giving an exegesis on a Koranic verse.[26]

As the professorship of law was divisible,[27] a jurisconsult could be appointed to only a part of the post; as, for instance, in the case of Siraj ad-Din 'Umar b. 'Ali as-Sairafi (d.919 / 1513), son of the above-mentioned 'Ala' ad-Din, who had one-third of the professorship of law in the Madrasa Shamiya Extra-Muros. He delivered an inaugural lecture in two parts on Sunday, the 5th of Safar, 896 (19 December 1490), and it was attended 'as usual' by the chief qadi and Shafi'i jurisconsults. In the first part, he commented on a Koranic verse; following which he gave a banquet in which sweetmeats were served. Then he delivered the second part of his inaugural lecture on positive law, beginning with the chapter on sales in the text of Rafi'i.[28]

It is noteworthy that the practice of the inaugural lecture with its ceremonial, the banquet and robes of honour, was unknown in

Ottoman Turkey until the eleventh/seventeenth century. Al-Muhibbi, in his biographical work covering that century, gives a description of its first occurrence in the madrasa founded in Üsküdar by the mother of Sultan Murat. The inaugural lecture delivered by the professor of law was attended by a great crowd including the notables and ulama. Three robes of honour were bestowed upon the professor; and there was a banquet for which the sultan's mother had sent one thousand dinars to defray the costs. Muhibbi stated that the inauguration was the first ceremony of its kind, unknown in Turkey up to that time, 'because the professors of law in their country are not familiar with that [i.e. with the custom of the inaugural lesson]. The professor of law simply sits alone in a place in which no other jurisconsults are present, and only the student who recites the lesson of law and his classmates are admitted, and no one other than the professor's students are in attendance'.[29]

The inaugural lecture had the function of displaying the qualifications of the new professor, the extent, depth and quality of his knowledge. Attended by the great jurisconsults, the city's notables and high officials, it was something in the nature of a test for the new professor who had to make a good showing of his talents. For the talented, it was an opportunity for acquiring a good reputation; for the less talented, it could be an ordeal. This situation is brought out in a passage in Nu'aimi's *Dāris* on institutions in Damascus regarding the talented master-jurisconsult Ibn az-Zamlakani, arch-enemy of the no less talented Ibn Taimiya. The passage quotes Ibn Kathir on Ibn az-Zamlakani as a great master 'who was not stricken with terror by the number of lessons [in the inaugural lecture], nor by the number of jurisconsults and men of eminence [in the audience]; on the contrary, the greater the multitude and more numerous the men of eminence, the more the inaugural lecture was insightful, brilliant, charming, persuasive and eloquent'.[30]

Ibn az-Zamlakani held many professorships and therefore had occasion to give many inaugural lectures. He was one of those professors with multiple posts[31] who must have been the target of Ibn Taimiya's scathing fatwa against that practice.[32]

3. Sources of Income

a. Fees from Students

In the early centuries of Islam compensation for teaching came, in part, from fees paid by the students. These fees sometimes amounted to great sums of money over the student's learning career; those who taught sometimes made great fortunes. More often, however, students could ill-afford to pay the high fees, and teaching scholars never became rich. Often enough, there were students who lived frugally during the long process of education; and there were teachers who barely eked out a living.

Salm, of the tribe of Taim b. Murra, was nicknamed Salm al-Khasir, Salm the Loser, because his father had left him a large sum of money which he spent on learning belles-lettres. But when he received from the caliph Harun ar-Rashid[33] 100,000 dinars for a panegyric composed in his honour, he proudly called himself Salm ar-Rabih, Salm the Winner.[34]

Al-Akhfash (d.221/835) taught the *Book* of Sibawaih in secret to al-Kisa'i,[35] and the latter paid him seventy dinars.[36] Muhammad b. al-Hasan ash-Shaibani, the famous disciple of Abu Hanifa, was reported as saying that his father left him thirty thousand dirhems, half of which he spent on grammar and poetry, and the other half on hadith and fiqh.[37]

Ibn al-Aʿrabi (d.230/845) had a monthly income from student fees amounting to one thousand dirhems.[38] Al-Mubarrad (d.285/898) was paid by az-Zajjaj one dirhem per day for tuition, most of what he was earning from his trade of cutting glass (zujaj), his daily wage being one to one and one-half dirhems. The disciple had promised to continue paying that sum the rest of the teacher's lifetime, and was said to have carried out his promise. Mubarrad helped Zajjaj get a lucrative position in the caliphal court.[39] Unlike some teachers, Mubarrad used not to teach gratis; on the other hand, he was said to have given the students their money's worth and charged only what he felt in conscience to be reasonable.[40]

Students agreed with the teacher upon the amount of the fee to be paid, and this was in accordance with the number of students in the group. In the following case, the students paid in advance, and the non-paying student was not allowed to attend the class. Tanukhi and Abu 'l-Husain al-Baidawi came to an agreement with Ibn Lu'lu' (d.377/987) on the fee he was to charge their group. When they came for their lesson Ibn Lu'lu' noticed one more student than the negotiated number. Dismissed from the group, the extra student sat in the hall-way. Baidawi began to recite the lesson, raising his voice so that the student in the hallway could hear him. The ruse being detected, the teacher had his maid-servant pound potash (ushnan) in a mortar vessel to drown out the recitation.[41]

Special accommodations were made when money was lacking. Al-Hamadhani frequented the grammarian ath-Thamanini's masjid, located in the Karkh quarter on Baghdad's West Side, auditing his lectures. One day the grammarian, who knew Hamadhani to have mastered Ibn Faris's (d.c.395/1005) *Mujmal al-lugha*, said to him: 'Why don't you study grammar (as a regular student)?'[42] 'Because', Hamadhani answered, 'you charge your disciples [ashab] a fee, and I am unable to pay it.' 'Never mind,' said Thamanini, 'you shall study grammar with me, and I shall study lexicography with you.' So Hamadhani studied Thamanini's *Commentary* on *Kitāb al-Luma*,[43] and

Thamanini studied the *Mujmal* of Ibn Faris.[44]

Teachers were still paid fees even after the advent of madrasas and other fully endowed colleges which were limited as to staff and students. As late as the seventh / thirteenth century, money was still said to be useful because it 'pays for teachers, for books, for the care of one's library, and for having books written'.[45] Even later, in the ninth / fifteenth century, fees were still being charged by teachers who taught certain works which they had mastered. A North African who came to Ramla, Palestine, was teaching the *Alfīya* of Ibn Malik (d.672 / 1274), a grammar in one thousand verses, and charging one-quarter of a dirhem for each verse.[46]

Yahya b. Ma'in of Baghdad inherited more than one million dirhems, all of which he spent in the study of hadiths. On being asked how many he himself had copied, he said, six hundred thousand. It was further reckoned that the muhaddiths had written for him twice that number. At his death, he left behind a great number of cases full of hadith notebooks. He was a close friend of the great muhaddith Ahmad b. Hanbal under whom he had worked on the study of the hadith sciences.[47] The Koranic expert Muhammad b. Ja'far (d.348 / 959) was reported saying he earned three hundred thousand dinars from fees paid by students to study Koranic science.[48]

Some teachers were reluctant to accept fees for teaching the religious sciences. In the case of the muhaddith Ibn an-Naqur (d.470 / 1077), this scruple led to hardship. Students of hadith kept him so busy teaching he had no time left to make a living for his family from other sources. Abu Ishaq ash-Shirazi issued him a legal opinion declaring it lawful for him to accept fees. He could not have charged high fees, for he still had to accept alms (zakat).[49] Notices on such teachers as Ibn an-Naqur are not lacking in the biographical sources.

Controversy continued over whether professors should collect fees from students. Some declared it prohibited by the law (haram), as did, for instance, Ghazzali who said that professors should emulate the Prophet by not exacting payment for teaching, religious knowledge ('ilm) being something that should be served, rather than serve others (fa 'l-'ilmu makhdūmun wa-laisa bi-khādimin).[50] Elsewhere Ghazzali made it clear that a professor could accept payment from the college's endowment for his legitimate needs.[51]

The following case is an amusing contrast to that of Ibn an-Naqur. A student, on his way to Mecca to perform the pilgrimage, was advised to study the *Musnad* of Ahmad b. Hanbal and the *Fawā'id* of Abu Bakr ash-Shafi'i under the direction of Abu Talib b. Ghailan (d.440 / 1049). He went to Abu 'Ali at-Tamimi (d.444 / 1052), who had the *Musnad* of Ibn Hanbal, to study the collection under him. Tamimi asked for two hundred gold dinars (mi'atai dīnār ḥumr). The student complained that all he had for the pilgrimage did not amount

to even one hundred dinars, and asked if Tamimi would merely give him an ijaza for the work. Tamimi said the fee would then be twenty dinars. Giving up, the student went to see if he could study under Ibn Ghailan. Ibn Haidar (d.464/1071) told him that the hadith-expert was sick with an intestinal ailment. On asking what the man's age was, he was told one hundred and five. The student thought of putting off his pilgrimage for a while, fearing that it might be otherwise too late to study with the great muhaddith. But Ibn Haidar encouraged him to perform the pilgrimage without fear and guaranteed Ibn Ghailan to be still alive on his return. Puzzled, the student asked how he could be so sure, given the age of the man. The answer was that Ibn Ghailan had one thousand dinars, in Ja'fari gold, which were daily brought to him and poured into his lap; just turning them over with his hands brought his strength back to him.[52] Apparently Ibn Ghailan's fee would not have been a low one.

These anecdotes, which need not be taken literally, are nevertheless indicative of the times. Some teachers were successful in their teaching, others unsuccessful, or reluctant to charge high fees. That such anecdotes could be exaggerated, and should be taken cum grano salis, is illustrated by what Abu Ishaq at-Tabari (d.393/1003) is reported to have said: 'Whoever says that someone has spent, in the pursuit of religious knowledge, one hundred thousand dinars, other than al-Akfani [d.405/1014] is a liar!'[53] This anecdote serves to show that great sums of money could be expended, and that such cases of expense, true in themselves, led to other claims somewhat exaggerated.

b. Pensions

Pensions were offered by the sovereign to jurisconsults, learned men generally, and students. Qadi Abu Yusuf, a famous disciple of Abu Hanifa, received an important sum of money from the caliph Harun ar-Rashid, in addition to the monthly pension accorded to jurisconsults.[54] The ulama were receiving such payments earlier under the Umaiyads, Hasan al-Basri (d.110/728) being among the recipients.[55]

The caliph al-Qadir (caliphate: 381-422/991-1031), whose name was appended to the famous Qadiri Creed, a religious manifesto against radical shi'ism, and rationalistic Mu'tazilism and Ash'arism,[56] enlisted the services of the Mu'tazili scholar 'Ali b. Sa'id al-Istakhri (d.404/1014) to write a tract in refutation of the doctrines of Batinism, for which the caliph recompensed him with a handsome pension, transferring it to the daughter when her father died.[57]

Zajjaj (d.311/923), already mentioned above, was so highly regarded by the caliph al-Mu'tadid (caliphate: 279-89/892-902) that he received three pensions: that of the boon-companions, that of the jurisconsults, and that of the ulama, in all approximately three hundred dinars. These pensions were standard procedure; it is therefore understandable that many sought to be on the caliphal list of

recipients, but not all succeeded.[58] On the other hand, not all learned men desired to be on the list, preferring to stand aloof in order to preserve their freedom of speech. Some lost their place on the list after having incurred the displeasure of their patrons. Abu Zaid al-Balkhi (d.322/934) is an example of a scholar whose regular emoluments from two different sources were cut off following the publication of certain works.[59] The service rendered by the jurisconsults in return for emoluments received often consisted in issuing accommodating legal opinions solicited by the sovereign or other men of power.[60]

The celebrated philosopher al-Farabi in the early part of the fourth/tenth century, at the court of Saif ad-Daula (regency: 333-56/944-67), was receiving from the treasury (bait al-mal) four dirhems daily; that was all he wanted.[61]

Some scholars used their influence to obtain funds, not for themselves, but in order to distribute them among their students. Such was the case with Abu 'l-Husain al-Balkhi (d.340/951). Others gave of their large incomes to the needy. Abu Muhammad al-Hamadhani (d.210/825), a Hanafi jurisconsult, who was credited with introducing the juridical doctrines of Abu Hanifa into Isfahan, had a yearly income of one hundred thousand dirhems. In spite of this large sum, he was said never to have had to pay the alms-tax on it because he gave it away in stipends to needy traditionists and jurisconsults.[62]

c. Endowed Salaries

The monthly professorial salary in the madrasas of Baghdad in the fifth/eleventh century was usually ten dinars. This was half the amount paid to a physician of the fourth/tenth century.[63] There are no extant deeds of waqf for these centuries in Baghdad,[64] let alone one with a budget for the institution and its beneficiaries. On the other hand, Nuʿaimi has preserved the following budgets from the deeds of three Damascene institutions of the sixth, eighth and ninth centuries (twelfth, fourteenth and fifteenth of our era).

d. Budgets of Some Colleges

1) The Shafiʿi ʿImadiya College of Law

The deed of foundation of this madrasa of the sixth/twelfth century stipulates the following monthly stipends:[65]

Mutawalli (nazir, nazar)	100 dirhems
Professor of Law (mudarris, tadris)	60 dirhems
Mats	300 dirhems
Oil for lamps	24 dirhems
Caretaker (ʿamil, ʿamala)	100 dirhems
Leader of the Prayer (imam, imama)	40 dirhems

Fellows – 10 in number (fuqaha', sg. faqih)	(each)	20 dirhems

It would appear that this college admitted only those students of law who had completed the basic course of four years as mutafaqqih, and had passed on to the level of faqih. All ten were addressed as 'shaikh', the same title given to masters generally (cf. All Souls' College at Oxford where only Fellows are admitted).

2) The Shamiya College of Law Intra-Muros

The waqf instrument of this Shafi'i madrasa instructed the mutawalli to distribute the income by seeing first to the needs of the college: oil, lamps, carpets, rugs, trellises, candles, and whatever else was necessary. The remainder of the income had to be divided among the stipendiaries each according to his worth as determined at the discretion of the mutawalli after he allotted himself ten percent, and after 500 (dirhems) were set aside annually for apricots, watermelon, sweetmeats for the night of mid-Ramadan. He could further increase the number of Shafi'i working (mushtaghilun) fellows and scholars, or decrease them in accordance with the increase or decrease of the endowment income.[66] When the endowment income increased, the mutawalli had the option of increasing the number of these scholars and fellows, or of distributing the increase among those entitled to receive the income.[67] Therefore the number of students was not a constant in this institution, but rather depended on the revenues and on the discretion of the mutawalli.

3) The Tankiziya College for Koran and Hadith

This college was founded by Tankiz (d.741/1340) in 728/1328.[68]

Professor of Koranic Science and Imam (Shaikh al-iqra', Mashyakhat al-Iqra' and Imam, imama)		120 dirhems
3 Professors of Hadith (Shaikh al-hadith, Mashyakhat al-hadith)	(each)	15 dirhems
12 Students of the Koran (al-Mushtaghil(un) bi 'l-Qur'an, sg. al-Mushtaghil . . .)	(each)	7.50 dirhems
5 Students of hadith (al-Mustami'un, sg. al-mustami')	(each)	7.50 dirhems
Attendance Keeper (katib al-ghaiba, kitabat al-ghaiba)		10 dirhems
The Muezzin (mu'adhdhin, adhan)		40 dirhems
The Gatekeeper (bauwab, biwaba)		40 dirhems
The Supervisor of Finances (qaiyim, qiyama)		40 dirhems

The Bookkeeper (sahib ad-diwan, sahabat ad-diwan)	40 dirhems
The Superintendent (al-musharif, al-musharafa)	40 dirhems
The Custodian (al-ʿamil, al-ʿamala)	30 dirhems
The Collector of Revenues (al-jabi, al-jibaya)	50 dirhems
The Notary of the Construction Contract (shahid al-ʿimara, shahadat al-ʿimara)	20 dirhems
The Foreman of Construction (mushidd al-ʿimara, shadd al-ʿimara)	20 dirhems
The Master-Masons (al-miʿmariya, sg. miʿmari)	15 dirhems
The Deputy-Mutawalli (niyabat an-nazar, na'ib an-nazar)	40 dirhems
The Mutawalli (an-nazir, an-nazar)	100 dirhems

4) The Farisiya College of Law

This Shafiʿi madrasa was founded in 808 / 1405. Its deed of foundation stipulated the following stipends for its beneficiaries (each, per month):

2 Professors of Law (mudarris, pl. mudarrisun)	80 dirhems
10 Students of Law (faqih, pl. fuqaha')	45 dirhems
10 Students of the Koran (muqri', pl. muqri'un)	15 dirhems
15 Orphans to study the Koran (yatim, pl. aitam)	15 dirhems
2 More Students of the Koran	15 dirhems

On feast-days each was to receive a supplementary 15 dirhems, and every Friday one quarter-qintar of bread was to be distributed among them. The rest of the income from the endowment was to be paid to the descendants of the founder.[69] Notice here that the college admitted up to ten law students designated as faqihs. As in the case of the previously mentioned ʿImadiya College, these law students were graduate fellows who were able to 'read' law under the college's two Shafiʿi professors according to the four Sunni madhabs. This is explicitly stated in the passage referring to the professors: yuqra'u ʿalaihimā anwāʿu 'l-ʿulūmi mina 'l-madhāhibi 'l-arbaʿa.[70]

4. Instability of Income and Resort to Abuses

a. Instability of Income

There were scholars who taught without sufficient means of subsistence. Abu Hassan az-Ziyadi (d. 242 / 856), a traditionist and juris-

consult, a ghulam of Abu Yusuf, had been a qadi originally and was removed from office. Destitute, he began to issue legal opinions in a mosque near his home, where he also taught law and hadith, and led the prayers. Still poor, he tried to gain his livelihood through some benefice, but without success. He spent all he had, sold all that he owned and fell into great debt.[71]

Abiwardi (d.425/1034), a Shafi'i jurisconsult, disciple of Abu Hamid al-Isfara'ini began as qadi, was removed from office, taught law afterwards in the West Side of Baghdad, in the Fief of Rabi' quarter, and had a study-circle in the Mosque of Mansur for issuing fatwas. The biographer says that he patiently endured poverty, keeping the true state of his affairs hidden.[72] Abu 'Ali al-Hashimi (d.428/1037) was reported as having been at some time in his career in such poor straits financially that he was forced to sell his home.[73] On the other hand, there were some professors who were wealthy. Abu Mansur 'Abd al-Qahir b. Tahir al-Baghdadi (d.429/1037), a theologian and jurisconsult, author of *al-Farq bain al-firaq*, was said to have taught seventeen different subjects. He had studied law under Abu Ishaq al-Isfara'ini and succeeded him to the professorship of the Mosque of 'Aqil. Not charging fees for his teaching, he derived no monetary gain from it, but rather distributed his wealth among scholars and students.[74]

b. Embezzlement of Endowment Income

In the year 523/1129, Mihani, the professor of law at the Nizamiya College, was dismissed for embezzlement of endowment funds. The same year, Qadi 'l-qudat az-Zainabi (d.525/1131) was placed under house arrest with guards for embezzling endowment funds from the Shrine College of Abu Hanifa where he was professor of law. The revenue of this college was reported to be 80,000 dinars annually, but an amount less than 10,000 dinars was being spent on it.[75]

The temptation was great for some, under such circumstances, and there was keen competition for the post of professorship in the colleges, especially when this post was combined with that of the mutawalli who handled the budget. Mihani had been appointed to the professorship of the Nizamiya three times.[76] Ibn at-Tabari was appointed twice, the second appointment taking place after Mihani's first dismissal. The new appointee had gone to so great an expense to secure his appointment in the place of Mihani that the Shafi'i biographer Sam'ani reports the amount to have been such that the professor could have founded a college of his own.[77]

The sources do not mention such extreme cases frequently, though the Nizamiya College was beset with frequent dismissals and re-appointments.[78] In contrast, there was the appointment of Abu Ishaq ash-Shirazi to the Nizamiya of Baghdad which lasted from the year of its foundation to the day he died, seventeen years later. There is also

the extraordinarily long tenure of Nur al-Huda az-Zainabi to the Shrine College of Abu Hanifa which lasted from 461 / 1069, the second year of its foundation, to 512 / 1118, when the professor died, his tenure lasting some five months short of fifty-two years.[79] His predecessor, the first appointee, had died the second year of his appointment.[80]

Matters ran smoothly when professors were of this calibre; and they ran smoothly too when those in charge of the endowments were strong administrators, as in cases such as that of Shihab ad-Din al-Maqdisi al-Ba'uni (d.816 / 1413) under whose administration the waqfs were said to have been kept in order and students of law received stipends which, before him, had never reached them.[81]

c. Multiplicity of Posts

Ibn Taimiya censured professors holding several professorships in various colleges. 'Among those who have taken money unjustly are those who have salaries many times more than they need[82] and those who have acquired posts with big salaries then hired substitutes at nominal fees to work in their place.'[83] Ibn Taimiya was alluding here to professors who were also administrators with several posts of the type that can be run by a substitute (na'ib), the professorship of law (mudarris) being one of these.

Subki, in his *Mu'īd an-ni'am*, criticizes the ulama for their worldliness and cupidity, and their predilection for luxuriously decorated colleges with their rich endowments.[84] Haitami, in his *al-Fatāwā al-kubrā*, mentioned the case of Fakhr ad-Din b. 'Asakir (d.620 / 1223), in a censuring tone: 'It is reported of Fakhr ad-Din b. 'Asakir that he used to have a number of colleges in Damascus in which he taught. He also had the Salahiya College in Jerusalem, residing in those of Damascus certain months and in that of Jerusalem certain other months of the year, and this in spite of his religious knowledge and piety.'[85] Haitami went on to say that legal opinions were solicited regarding a professor appointed to two colleges (madrasa) in two different towns at an appreciable distance, one from the other, as would be Aleppo from Damascus. A certain group of jurisconsults issued legal opinions in favour of the legality of that practice, provided that the professor appointed a substitute to teach at the other college. In favour, were jurisconsults of all four Sunni schools of law, of whom Haitami listed the Shafi'is by name. Another group issued legal opinions opposing the practice. Haitami opted for this position as being the more seemly one (al-ashbah), on the basis that the professor's absence from one of the colleges in order to be present at the other did not constitute a legally valid excuse.[86]

The practice of holding multiple posts was widespread. The Hanafi jurisconsult al-Husain b. Ahmad al-Yazdi (d.591 / 1195) is reported as having had appointments in eleven or twelve madrasas with a total

student body of one thousand two hundred.[87] The chief qadi Shams ad-Din al-Akhna'i ash-Shafi'i (d.816/1413) held appointments in five law colleges, teaching in two of them on Sundays and in three on Wednesdays.[88] When Ibn Khallikan came to Damascus he was appointed qadi and given the trusteeship of the waqfs, of the Umaiyad Mosque, of the hospital, and the professorships of law of seven colleges: the 'Adiliya, the Nasiriya, the 'Adhrawiya, the Falakiya, the Rukniya, the Iqbaliya and the Bahnasiya.[89] Ibn az-Zamlakani was reported as having had a number (unspecified) of professorships in Damascus, besides holding down personally (bāshara), that is, without a substitute, several important posts in the government and the directorship of the Nuriya Hospital.[90]

Attempts were made to put a stop to this practice. The founder of the Shamiya College of Law Extra-Muros made a stipulation in his deed of foundation to the effect that its professorship could not be combined with that of another.[91] But these were isolated attempts that had little effect on the practice.

d. Divisibility of Posts

While some professors held several professorial posts, others had to share one single post. Some professorships were divided into halves, some into thirds and some even into fourths.[92] The first known case of a divided professorship occurred in the fifth/eleventh century in Baghdad. The two professors were Abu 'Abd Allah at-Tabari (d.495/1102) and Abu Muhammad al-Fami ash-Shirazi (d.500/1107). They had arrived in Baghdad in 483/1090, one four months after the other, both with orders to occupy the chair of law at the Madrasa Nizamiya. They shared the chair according to an alternating schedule, one teaching one day, the other the following day.[93]

Subki, on the authority of Ibn Razin (d.710/1311), was against this division of the professorial posts. Such a practice was considered harmful to the legal education of the students because of the divergence in the content of the lectures and the methods of the professors.[94]

'Izz ad-Din al-Ansari (d.682/1283) and Shams ad-Din al-Maqdisi (d.682/1283) contested each other's right to the professorship of the Shamiya College Extra-Muros. After a long and bitter contest the professorship was divided in two between them (qusimat bainahumā niṣfain), with each of them teaching one part of the day.[95] Badr ad-Din al-Hasan b. Hamza (d.770/1369) taught in the Jauziya College where he had one-half of the professorship of law.[96] Ibn Qadi Shuhba (d.851/1447), in 835/1432, had an interesting double appointment to one and the same post of the 'Adhrawiya College: one-half of the professorship of law he held directly as the principal professor and the other half indirectly as substitute-professor.[97] Kamal ad-Din al-Husaini (d.933/1527) had a similar double appointment to the professorship of the Taqawiya College:

one-half as substitute-professor in the place of his brother-in-law and the other half in his own name.[98] Taqi ad-Din b. Qadi 'Ajlun (d.928/1522) resigned one-third of the professorship of the Shamiya College Extra-Muros in favour of Siraj ad-Din b. as-Sairafi.[99] Such resignations were usually done for a consideration (bi-'iwaḍ), the professor sometimes regretting not having asked an adequate compensation.[100] Shams ad-Din al-Kufairi (d.831/1428), Taqi ad-Din al-Asadi (d.851/1447) and Taqi ad-Din al-Libyani (d.838/1434) shared the professorship of law of the 'Aziziya College in thirds (muthālathatan).[101] And in 815/1412, the professorship of law in the Shamiya College Extra-Muros was divided into fourths.[102]

Tenures were contested and legal opinions sought in order to despoil someone of his appointment, or as in the above cases, to share the appointment. There was an actual case (waqi'a) cited in the fatwa collection of al-Firkah. A professor had held an appointment in a college of law for an unspecified period. His right to it was contested by his paternal cousin who was equally qualified for teaching law (and presumably had an equal right of succession to the chair of law, but no details were given in the fatwa as stated). The questions were: Should the incumbent be made to desist from teaching because of this equality in competence? Does the incumbent have the onus of showing the means he used to be appointed and why he should continue to hold the appointment? The answer was in the negative on both counts in favour of the incumbent, and three jurisconsults concurred with the opinion given by 'Ali b. ash-Shahrazuri (d.602/1205).[103]

Ibn Taimiya, who censured those who took multiple posts with salaries beyond their needs, and those who hired substitutes to work in their place for a fraction of the pocketed salary, was equally concerned for the underpaid professor as he was for the underpaid substitute. He recognized the validity in law for such substitution (niyaba), but required that the substitute be of equivalent competence as the scholar hiring him (mustanībuh).[104]

The following fatwa, issued also by Ibn Taimiya, dealt with a similar question involving both professors and students. The founder had set up a trust for a college of law making the following stipulations in the deed: (1) no one was to reside in the college who had a position elsewhere with a salary or an allowance; (2) no one was to benefit from its income who had a salary from another post elsewhere; and (3) each student (talib) was to have a definite allowance. The questions put to the jurisconsult were as follows: Were these stipulations valid? If so, what would happen if the revenue of the trust decreased, and each student did not receive the allowance stipulated for him? Could the mutawalli annul the stipulation in question or not? If the judge (hakim) passed favourably on the validity of the

trust as stated, could the stipulation be annulled?

Ibn Taimiya's answer was that, to begin with, if the trust was set up for the sake of God, then it was valid. If the income of the trust decreased, the student could seek the difference from another source, because an adequate remuneration for students of religious knowledge was not only a legal obligation, but also a universal good which men could not do without. The mutawalli should not prohibit the students from seeking the difference in allowance from another source. This would not be an invalidation of the founder's stipulation; but rather a suspension of it at a time when it could not be executed because of insufficient income. Funds for students of religious knowledge belonged in the same category as funds paid to combattants and ulama from war booty (fai'); they are not like wages for a worldly activity, nor like rents for worldly things. Legal obligations should be dropped when impossible of accomplishment.[105]

5. Accession to Professorial Posts

Accession to the post of professor was normally through superior qualifications. Before the advent of the licence to teach, it was upon the recommendation of the candidate's professor, or the general consensus of the local ulama. These considerations still prevailed after the advent of the licence to teach. In the best tradition, the most qualified was chosen to assume a professorial chair when it became available. This was determined by the candidate's reputation as a disputant. Often the choice fell upon the best disciple of the retiring professor, but there were other considerations which came into play.

a. By Line of Descent

One of the earliest customs regarding succession in the mosque-colleges and madrasas, particularly when these were founded by the professors themselves, was to stipulate that the post of mutawalli and mudarris should be reserved for the descendants of the founder, sometimes with the condition that the posts should go to the most qualified among them. A previous instance of this custom was that of Imam al-Haramain al-Juwaini who succeeded to his father's mosque-college upon the father's death, the son being only eighteen years of age.[106] The caliph followed the same principle whenever the competence of the sons made it possible. Abu 'l-Ghana'im b. al-Ghubari (d.439/1048) succeeded to the teaching posts held by his father, upon the latter's death, in the Mosque of Mansur and the Mosque of the Caliphal Palace.[107] Likewise, Abu Nasr b. al-Banna' (d.510/1116) succeeded to his father's two posts[108] in the same two Mosques. But al-Kalwadhani's chair was given by the caliph to the disciple, Abu Bakr ad-Dinawari; the sons of Kalwadhani were too young for consideration.[109] The waqf deed of the Madrasa 'Asruniya, founded by Ibn 'Asrun (d.585/1189), stipulated that the professorship of law be reserved for the progeny of the founder, and that those among them

not yet qualified should be provided with a substitute to teach in their place.[110] In 827 / 1424, the chief qadi of Damascus, Najm ad-Din b. al-Hijji, resigned from the professorship of law of the Shamiya College Extra-Muros in favour of his son who was but two years of age.[111]

b. By Sale

Nu'aimi (d.927 / 1521) cites, in his history of colleges, many cases where the incumbent professor resigned his post in favour of another person. It is clear that this type of resignation was often done for a price. This happened with ad-Dilji (d.838 / 1435) who gave up his post as head and mutawalli of the Khanqah of Khatun in favour of Wali 'd-Din b. Qadi 'Ajlun (d.872 / 1468) for 'a good amount', then regretted having done so.[112]

c. Other Abuses

The Damascene Abu Shama, professor of law, historian and biographer, composed a long poem of one hundred and eight verses on the abuses of endowed colleges in his day. He wrote the poem in answer to his critics who censured him for withdrawing from his post as a college professor of law. He had turned to his property, cultivating the land and restoring the buildings. His chief complaints were that it was no longer possible for an honest learned man to make a living teaching in the colleges. Those who benefited from the endowed colleges were scoundrels devoid of learning, or self-seeking sycophants currying the favours of founders. Abu Shama said that before he took to the tilling of his land, the cupboards were empty and his family went hungry. By working his land he was able to feed his family, fill the cupboards, give to the needy at his door and provide for the birds of the air besides. His advice to the seeker of knowledge was to take up a craft to live by so as to keep his self-respect and to preserve the sanctity of his calling as a professor of religious science.[113]

Sakhawi (d.902 / 1497), in his biography of learned men of the ninth / fifteenth century, describes Zain ad-Din Hijji b. 'Abd Allah ar-Rumi as a jurisconsult at the head of the Turba Zahiriya, outside of Cairo, completely devoid of learning; but he held his position because of connections with the Turks 'as is the case with others'.[114]

II. STUDENTS

1. Classifications

Students were classified in various ways: (1) by relative levels of studentship; (2) as stipendiaries; (3) as foundationers; and (4) as participants in class.

a. By Relative Levels of Studentship

There were three relative levels of studentship: (1) mubtadi' (pl. mubtadi'un), beginner; (2) mutawassit (pl. mutawassitun), intermediate; and (3) muntahin (pl. muntahun), terminal.[115]

The third of the general levels is designated as 'the highest class' in

an anecdote involving the Subkis, father and son. The father wanted his son to study law under the great al-Mizzi who, perhaps out of deference to the father, wanted to place the son in the highest class (at-tabaqa al-'ulya). The father, objecting, wanted his son to be placed with the beginners (mubtadi'un). Dhahabi said in protest that the young Subki belonged to a level higher than that of beginner. The father settled for the intermediate class (mutawassitun).[116]

b. As Stipendiaries

Within these three general levels, other levels were determinable by the amount of the students' stipends. This further refinement of levels was discussed and justified in a legal opinion by Taqi ad-Din as-Subki which follows, in substance:[117]

> Law students are ranked according to three classes, as is the case in this, the Shamiya College, and other colleges. If such a ranking is owing to the founder's stipulation, as is the case in the Shamiya College Extra-Muros, then it should be followed; but if not, as is the case in this, the Shamiya College Intra-Muros, then the most preferable opinion is that it is not permissible to confine all students to these three classes alone; for the Prophet has said that we were instructed by God to treat people according to the position they occupy. Therefore when there is a law student who belongs in the class of twenty [dirhems] and another in the class of thirty [dirhems] and a third who falls between them, above the first student, but below the second, to have him join either of the two levels would be to place him at a level which is not his own, and thus go against the Prophet's dictum. He should rather be placed between the two of them, for that is his level. The levels of law students go from the least of portions to the most; and it is up to the mutawalli to do his best in making a judgment as to the exact level.[118]

c. As Foundationers

As foundationers, students fell into two distinct ranks: (1) the mutafaqqih (pl. mutafaqqiha); and (2) the faqih (pl. fuqaha').

The mutafaqqih was the undergraduate student of law. This term designated all those classes mentioned above, the three relative levels of studentship, as well as those who were placed in-between and identified by the amount of the stipends they were paid. The term mutafaqqih is the active participle of the verb *tafaqqaha*, from the root *fqh*, meaning: to learn the science of law, to apply oneself to the acquisition of law (fiqh). The term faqih was applied to the graduate student as well as to the accomplished jurisconsult. In the latter sense, every faqih was both lawyer and jurisconsult, one who knows the law and issues legal opinions. Strictly speaking, the terms mutafaqqih and faqih were applied to two definite groups of students: (1) mutafaqqih designated the student of law up to and including the terminal class,

al-muntahun; (2) faqih designated the student of law beyond the terminal and up to the licence to teach law and issue legal opinions.

In a loose sense, however, the terms were used interchangeably, a practice that raised some problems regarding the interpretation of a deed of waqf. A legal opinion of Taqi ad-Din as-Subki on a case of this nature clarified the distinction between the two terms. He said in substance:

> The term mutafaqqih may be used in the sense of beginner [mubtadi'], in which case its designee would be co-stipendiary with the faqih [qasīm al-faqīh]. The term may also be used to designate anyone engaged in the field of law [kull man yata'āṭā 'l-fiqh]; witness the statement of the jurisconsult Abu Hamid al-Isfara'ini – 'When we finally finish our studies of law we shall be dead' [lammā tafaqqahnā mitnā] – for fiqh is a sea without confining shores. There is not a jurisconsult these days, or in the recent past, who has not come across questions that have given him grey hairs, and it can therefore truly be said of him that he is a student, still learning the law [yatafaqqah]. Therefore the adjunction of the term mutafaqqih to that of faqih is not in this particular text of the deed an adjunction of dissimilarity in meaning, but one in terms only.[119]

Subki made a further distinction between the two ranks. A stipulation in the deed of the Shamiya College Intra Muros limited the number of 'fuqaha' and mutafaqqiha' *working* in this College to twenty men, 'among them the repetitor (mu'id) of the college and the imam, but not including the professor of law (mudarris), the muezzin and the qaiyim'.[120] According to the terminology of the deed, the repetitor (mu'id) and the imam were faqihs, whereas the professor (mudarris) was not. 'The repetitor', he said elsewhere, 'is one of the fuqaha', as clearly stated by the founder; he is not one of the mutafaqqiha, because he is of a higher rank (li-annahū arfa'u rutbatan).'[121]

In connection with a remark regarding the function of the repetitor, Subki said that it was incumbent upon the mutawalli of the college to give him a preference consistent with his merits – merits based on qualifications discussed previously – and the fact that his function was to *work* the students (yushghilu 'ṭ-ṭalabata) and benefit them.[122]

This distinction between the two terms was already current in earlier times. Ibn 'Aqil, in his *Wāḍiḥ*, made the following remark: '... and this is the sort of criticism regarding which many fuqaha' (sg. faqih) are unmindful who have not concerned themselves with this science, let alone the mutafaqqiha',[123] making the distinction quite clear.

A question soliciting the legal opinion of Ibn as-Salah (d.543 / 1148) established this distinction between the two ranks. He was asked about a college of law which was 'founded for the benefit *of fuqaha' and muta-*

faqqiha, and in which an endowment was established *for its fuqaha' and mutafaqqiha'*.[124]

Certain terms were used in connection with the terminal class of students, called al-muntahun, who were *finishing* their studies and belonged to at-tabaqa al-'ulya, the highest class. In connection with the first term, al-muntahun, there were two verbs, one in Form IV, anhā, and another in Form VIII, intahā, both of which derive from the same radicals, *nhy*. The verb anhā was used in both an intransitive as well as the usual transitive sense; while intahā was used in the intransitive sense. Writing about the jurisconsult 'Imad ad-Din al-Hisbani (d.778 / 1376), Nu'aimi said that he came to Damascus in the year 738 / 1338 and was enrolled as a faqih in the Shamiya College Extra-Muros. Its professor of law, Shams ad-Din b. an-Naqib (d.745 / 1345), directed him in the termination of his studies (anhāh: literally, terminated him); Hisbani then became a constant associate (lāzama) of Fakhr ad-Din al-Misri until the latter authorized him to issue fatwas (ḥattā adhana lahū bi 'l-iftā'); he then went on to teach law (darrasa), issue legal opinions (aftā) and impart useful knowledge as assistant (afāda), all of these functions being those of an accomplished jurisconsult. He then substituted for (nāba 'an) two professors of law. He was one of those who attacked Taj ad-Din as-Subki and despoiled him of his professorship of law in the Aminiya College. He also held the professorships of the Iqbaliya and Jarukhiya Colleges.[125]

Jamal ad-Din az-Zuhri (d.801 / 1399) and his brother terminated their studies (anhā) at the Shamiya College in 785 / 1383, and in 791 / 1389, his father, a master-jurisconsult, authorized them both, along with a group of student-jurisconsults (fuqaha'), to issue fatwas; that is to say, six years intervening between the termination of legal studies and the authorization to issue legal opinions. His father then gave up his professorship at the Shamiya College in favour of his two sons, each being appointed to one-half of the professorship.[126]

The point at which the student completed the terminal period of his studies and gained admission into the class of ifta' was made clear by Shams ad-Din al-Kufti (d.818 / 1415). Speaking of this phase of his education, he said:

> Shams ad-Din al-Jurjawi, Shams ad-Din as-Sanadiqi, Baha' ad-Din b. Imam al-Mashhad, and I, used to meet in the Aminiya College to work on our studies. It happened that Sanadiqi had written a ta'liqa in one volume on the *Tanbīh* [of Abu Ishaq ash-Shirazi]. He then wanted to enroll in the Shamiya College Extra-Muros in the class of ifta'. So he went to Qadi Shihab ad-Din az-Zuhri and broached the subject with him. The answer was: 'Not until you have written.' Handing him the volume he had compiled, Sanadiqi said, 'Take this and ask me on any part

> of it, for I have not written a thing in it that I cannot recite to you from memory.' The professor did so, and Sanadiqi answered all his questions. So the professor gave him permission to enroll in the class of ifta'. Then Sanadiqi said: 'My classmates know the contents of the volume as well as I do' – meaning al-Jurjawi, Ibn Imam al-Mashhad and Ibn al-Kufti.' So the professor declared them all as having terminated their legal studies [anhā li 'l-jamī'].[127]

When a student 'terminated', he passed from the undergraduate to the graduate phase of legal education. In the early medieval period, this phase was that of suhba, the student became a sahib, fellow, of the professor of law; later, this phase was referred to as the class of ifta', tabaqat al-ifta'. Thus the terminal class immediately preceded the ifta' class of legal education, the period during which the student was trained in research and disputation, involved in the issuing of legal opinions and their defence. The student-jurisconsult, at this stage, devoted his time to apprenticing with the master-jurisconsult, under whom he learned and practised the process of arriving at legal opinions. On completion of this phase of his education, tabaqat al-ifta', the class of apprenticing for the muftiship, he was licensed by the master-jurisconsult to issue them (ijāza, or idhn, bi 'l-iftā').

d. As Participants in Class

Two terms differentiate one student from the other as participants in class. The 'working student' is designated by the term al-mushtaghil, and the 'auditing student' by the term al-mustami'. The working student, as stipendiary, was ranked above the auditor. According to the deed of the Ashrafiya Hadith College, he was paid eight dirhems, as compared to the four dirhems paid to the auditor.[128]

e. Other Terms for Students

Other terms designating students did not denote distinction in rank: talib (seeker of knowledge), pl. talaba, tullab; and tilmidh, pl. talamidh, talamidha. Both terms were used in order to designate students generally. The term tilmidh further connoted the meaning of disciple; whereas talib was sometimes used especially for students of hadith, in contradistinction to faqih, and mutafaqqih, used strictly for law students. The specialized hadith student travelled in search of hadiths from traditionists who had survived as the sole authoritative transmitters of hadiths; whence the use of the term talib, a seeker, pursuer. The verb ṭalaba was used particularly in connection with 'ilm and hadith, to seek, to pursue, religious knowledge, hadith.

2. Some Aspects of Student Life

a. The Idle Student

Subki's *Mu'id an-ni'am* helps to form a clear image of the Muslim student in the Middle Ages. When speaking of the obligations of the terminal student (al-muntahi), belonging to the class that leads to

the class of ifta', he says that he must participate in disputations more actively than students below his rank. If he should remain silent, and collect the foundation's stipend as a terminal student because he feels he knows more than the other students present at the disputation, 'then he will not have praised God as He deserves to be praised for the favours bestowed upon him'.[129] In other words, the student must do the work expected of his level, not only for his own benefit, but also for that of his fellow students. It is incumbent upon him to participate more actively in the disputations, for his good as well as for the good of those students who could benefit from his participation. Otherwise he would not deserve the stipend paid him from the income of the endowment.

In this passage of his book, Subki deals with the terminal student after having dealt with the mufid, and before that, with the mu'id, two posts occupied by graduate students in the suhba-period of their studies. The terminal student is thus just a step in rank below that of the mufid, and the latter, a step below that of the mu'id.[130] These two posts may be compared to those of the modern 'teaching fellows' or 'assistants', held by graduate students working towards the doctoral degree.

Regarding the law students generally in the colleges (fuqaha' al-madrasa), Subki said that they have the obligation of doing their best to understand as much as they can, of being assiduous in their attendance, unless they have an excuse for being absent, valid in the eyes of the religious law (illā bi-'udhrin shar'ī).[131] Subki was insisting here on the student doing his job in order to be truly entitled to his share of the endowment income as one of its beneficiaries. For the practice of some students was to attend as many colleges as possible in order to have a share in as many endowments as possible, not unlike the practice pursued by their professors, who combined several professorships.[132]

Subki criticizes the idle or delinquent student who chats with his neighbours during the recitation of the Koran. In doing so, the student not only fails to recite the Koran, but is also in danger of engaging in slander. The recitation of the Koran is one of his obligations as stipulated in the deed of the endowed institution. Failing to do this, he compounds his wrong-doing by engaging in slanderous talk. There is also the student who does not listen to the poet singing the praises of the Prophet (al-madih). He often has opened a book in which he reads, not paying attention to what the professor is saying; on the contrary, he takes a seat far away from him so that he cannot hear him. Such a student does not deserve any part of his stipend, nor does he benefit from looking at a book while the lecture is taking place. If that is all the founder expected of him he would not have stipulated his presence in the classroom.[133]

Remarks made by Subki concerning the function of the keeper of attendance (katib al-ghaiba) tell us something about the practices of students involved in absenteeism. The keeper of attendance has the obligation of aiming for the truth. He must not report anyone who has not attended class before seeking the reason for his failure to show up. If the absent student has a valid excuse, the attendance-keeper should make a note of it; but if he reports him unfavourably without seeking the cause, he has wronged him by cheating him of his rights.[134] On the other hand, if, in return for a bribe, he lets the student off by failing to report him, then he has surely placed himself on the ledge of hell.[135] The job of attendance-keeper was made necessary because of the stipulation in the deeds of foundation regarding absenteeism. The delinquent student forfeited part or all of his stipend, depending on the extent of his absence.

There was also a post of attendance-keeper for hadith students (katib ghaibat as-sami'in), the above-cited keeper of attendance being for the students of law (katib al-ghaiba 'ala 'l-fuqaha'). The former had the duty of keeping an exact record of the names of students present, being careful to detect those who were not taking down the hadiths in dictation. He was not to report favourably on a student who failed to do so. If permissive in this regard, he was guilty of wrong-doing and would be punished for it in the life to come.[136]

b. The Sham Sufi Novice

Subki was deeply concerned about what he saw as the crisis of education in his day. One of the sectors to which he devoted a good deal of his concern were the Sufi novices of the monasteries. These institutions, like other institutions of learning, were endowed pious foundations based on waqf. From about the middle of the sixth / twelfth century, the number of Sufi novices had multiplied considerably, and their ranks had become swollen with undesirables taking advantage of the growing number of foundations instituted in favour of Sufism. The first Sufi brotherhood, the Qadiriya, named after the Hanbali Sufi 'Abd al-Qadir al-Jilani (d.561 / 1166) of Baghdad, was followed by others. The number of monasteries multiplied in Baghdad and elsewhere. The excesses of some of the devotees called forth severe criticism from the ulama, notably from the Hanbali polymath Ibn al-Jauzi in the sixth / twelfth century, and the Shafi'i Subki in the eighth / fourteenth. Fully one-third of the former's *Talbis Iblis* (The Deception of the Devil) is devoted to Sufi excesses; and Subki devotes a lengthy section to them in his *Mu'īd an'ni'am wa-mubīd an-niqam* (The Bestower of Reiterated Blessings and Annihilator of Afflictions). It should be noted that neither author was condeming Sufism as such, but only the excesses of some of its followers.

Subki began by saying that there were, regarding the Sufis, many opinions based on ignorance as to their true nature. This was because

of the great number of those who feigned to be Sufis. He cited the Shafi'i jurisconsult Abu Muhammad al-Juwaini (d.438/1047), as declaring Sufis to be ineligible for a charitable trust because they had no set system of rules to follow. Subki disagreed, saying that a charitable trust in their favour would be valid. He then went on to describe the Sufis as those who had renounced worldly goods and who devoted most of their time to worshipping God. He quoted statements of the early Sufis universally accepted by the ulama, namely Junaid (d.290/903), Abu Bakr ash-Shibli (d.334/946), Dhu 'n-Nun al-Misri (d.245/859), 'Ali b. Bundar (a disciple of Junaid), Abu 'Ali ar-Rudhbari (d.323/935), and his own father, Taqi ad-Din as-Subki, all of whom said much the same things in praise of the Sufis: they were the people of God, especially close to him (Ahl Allāh wa-khāṣṣatuh). After further quotations from Abu 'l-Qasim al-Qushairi and Junaid ('our method is based on the Koran and the Sunna' of the Prophet), and after relating anecdotes on their closeness to God and their miracles, he goes on to deal with those who pretended to be Sufis, saying in substance:[137]

> Now that you know that the Sufis are a special people in God's creation, you should also know that there are certain people who have copied them, but are not of them, and it is this fact that has created a bad opinion of the true Sufis. Perhaps God intended this in order to keep concealed these people who prefer anonymity. Most of the true Sufis decline membership in monasteries, eschew attachment to the material goods of this world, preferring to do without, rather than accept stipends for seeking and worshipping God. We try to emulate them by calling to mind their example. It is not they that we have in mind here. We are here speaking of those among them who are out for the material goods of this world; they have become open to scrutiny to the extent of their mingling. For, as the poet said, 'If you leave it alone you will be safe from those who claim it / But if you grab for it, you'll have their dogs to deal with.'[138]

Having made this distinction between true and false Sufis, Subki then deals with the 'Sufi-mendicants of the monasteries' (fuqara' al-khawaniq). It is here that the false Sufi mixes with those who have a true vocation.

> The Sufi who has a true vocation is one who has turned his back on the world, and turned to the service of God. If the Sufi mendicant entered the monastery to keep from going hungry, and to use its facilities to help him in the pursuance of his Sufi status, then he has done right; but if he did so in order to use it as a means to a material gain, if he does not renounce worldly goods and occupy most of his time with serving God, then he is a fraud who has no right to share in the Sufi endowment, and his sharing

in it is unlawful; because the founder established his foundation for the Sufis alone, and he is not one of them.

Subki goes on to speak of a frequent practice of people who make use of Sufi monasteries as a means to worldly possessions.

> In the sham of their patched shabby garments they have nothing in common with Sufis of moral character, except the Sufi guise. Those people are the imitation-Sufis of whom Shafi'i says 'big eaters, lazy sleepers, and awfully meddlesome'. Of them also Abu 'l-Muzaffar b. as-Sam'ani [d.489 / 1096] says: 'God save us from scorpions and mice, and the Sufi who has learned the way to our door'. And our professor Abu Haiyan has said of them: 'Eaters, idlers, drunkards; no honest work or occupation!' Others have said of them: 'Such a man is one who makes a show of belief in Islam, but hides a corrupt creed and audacious heresy; he wears the jumjum-shoe of the dervish and the tail of his turban hangs in front; and he is most likely a native of Persia'. And of them the poet said: 'The Sufi way is not the wearing of wool in patches / Nor is it your false tears at the sound of Sufi songs'.

They make use of monasteries as an excuse to don their counterfeit garments, to use drugs (hashish), and engross themselves in acquiring worldly goods. Subki invokes God to reveal their sham existence, exposing them for everyone to see. He thanks God that among them there is the man who takes to the monastery solely to cut off his relations with the world and devote himself to his Lord; who is content with what it provides for him, to assist him in allaying his hunger and cover up his nudity.[139]

The Sufi mendicants were under suspicion as to their sincerity in wanting to give up worldly goods and devote themselves to God's service. There was no suspicion of those outside the monasteries who devoted themselves to God in their homes, quietly devoting themselves to God's worship. But when one became the beneficiary of a monastery, an endowed foundation, his motives came under scrutiny, for he shared in the income of the endowment. Not only that, but he also could make use of his position to derive other benefits from followers among the laymen who believed in his position as a sincere devotee. Yet there were many sincere Sufis who could not be independent because of their poverty, whence their designation as mendicants (fuqara'). Subki wanted to make the distinction as clear as possible. There were those among the mendicants who were sincere in their vocations on entering the monastery, but found it hard to resist temptation, by accepting the patronage of men of power and influence who looked for Sufis as a means to attract the support of the masses among their followers.

3. Financial Conditions

More may be learned about the medieval Muslim student from the anecdotes dealing with matters relating to subsistence, financial aid, waqf stipends and the like.

a. Professors' Support of Students

As already mentioned above, under professors' sources of income, students paid their teachers for tuition. On the other hand, there were professors who taught for no monetary return (iḥtisāban), a practice which was not unusual among the pious and ascetic. More interesting still was the frequent practice of professors supporting students from their own pockets to help them through their long years of study.

Abu Hanifa was said to have supported his disciple Abu Yusuf by giving him periodically, as the need arose, a purse of one hundred dirhems, enabling him to pursue his studies without working for a living.[140] The Shafi'i jurisconsult and muhaddith Muhammad b. Hibban al-Busti (d.354/965) was said to have set aside a home for his out-of-town students (al-ghuraba') of hadith and law, providing them with allowances.[141] Al-Khatib al-Baghdadi, in 456/1064, was reported as giving one of his students five gold dinars and a like amount on another occasion, for writing paper (kaghid).[142] In his last will and testament, he left instructions for the muhaddith Ibn Khairun, instituting his books as waqf; and he left the whole of his estate as alms in aid of hadith students generally.[143] Ahmad b. 'Abd al-Malik an-Nisaburi (d.470/1078) administered an endowment for the benefit of hadith students, consisting of books bequeathed by former professors, and endowment income for the purchase of paper and ink. He received alms from notables and merchants which he turned over to the needy in the scholastic community.[144]

Imam al-Haramain al-Juwaini spent his inheritance on his law students and continued to support them from his income as professor. He had come into his inheritance at the age of twenty, at the death of his father, to whose masjid he succeeded, assuming its chair of law.[145] A similar case was that of al-Qasim b. 'Asakir (d.600/1204) who, on succeeding to his father's post of teaching hadith at the Umaiyad Mosque and to the chair of hadith in the Nuriya Hadith College, in Damascus, set aside his entire salary for the financial support of those students who came to him for help.[146] The Hanbali Koranic scholar, Abu Mansur al-Khaiyat (d.499/1106) was imam of the masjid of Ibn Jarada in the sanctuary (harim) of the Caliphal Palace quarter on Baghdad's East Side, where he lived as an ascetic, teaching the Koran to the blind. Not only did he teach without pay, for the sake of God, but went out to beg for them in order to help them with their subsistence. Almost a centenarian at his death, he was said to have taught the Koran, throughout his long life, to seventy thousand blind students.[147] Qutb ad-Din ash-Shirazi (d.710/1311) was reported to

have spent his entire annual income of thirty thousand dinars on his students.[148] Ibn ash-Sharishi (d.795/1393), who held two professorial chairs, one at the Badara'iya College and another in the Umaiyad Mosque in Damascus, frequently gave of his income to his students.[149] So also Ibn al-Habbab (d.800/1398).[150]

The foregoing sampling of philanthropic professors who supported students financially shows that such aid occurred long before, as well as long after, the advent of endowed colleges. Endowed though the colleges were, endowment incomes were at times far from being ample, either because of failure of crops, or because of misappropriation. Even under the best conditions, endowed colleges could accommodate only a limited number of students.

b. Patrons Among the Powerful

Caliphs, officials and notables were also among the early benefactors of scholars. The money was usually offered to the professors to distribute among their followers. The caliph Harun ar-Rashid gave Muhammad b. Hasan ash-Shaibani money to distribute among his students.[151]

In the year 311/923, the wazir Ibn al-Furat distributed funds among students of literature (adab) and to those who were studying hadith. He instituted this bounty on an annual basis, setting aside sums of money to be spent on paper (kaghid). It was said that no one had done this before, that is, on an annual basis. He also used to set out in his kitchen (matbakh) and in his palaces (dur) meat, sweetmeats, fruit and various refreshments, as well as candles and paper, offering these to visitors on a first-come-first-served basis. It was also said of him that during his tenure as wazir, the prices of candles, ice (for refreshments) and paper would rise, and when he was dismissed from office, they dropped.[152]

Maslama b. 'Abd al-Malik left in his will instructions for a sum of money to be disbursed to students of literature.[153] Waqidi is quoted as saying that he willed one-third of his estate for this purpose, and commented: 'This is a calling that has fallen into disuse, shunned by its erstwhile practitioners'.[154]

In 378/988, the Fatimid caliph al-'Aziz bi 'llah founded a dar (house) for the students of law in the Azhar Mosque on the advice of his wazir, Ya'qub b. Killis (d.380/990), and established allowances (rizq, pl. arzaq) for them from the public treasury.[155]

Professors were often reported as having refused money offered them for themselves, as well as for distribution among their students and disciples. They refused from a sense of asceticism and a desire to stay clear of money that would compromise them in the eyes of their faithful followers and admirers as being tools of the government in power or of unscrupulous men of wealth and influence. The celebrated Sufi Junaid was said to have been offered 500 dinars in gold to be

distributed among his disciples, and he refused it.[156]

Abu Hamid al-Isfara'ini (d.406/1016)[157] a successful professor of Shafi'i law, was said to have lectured to a class of law students numbering seven hundred, a very unusual number indeed for a course on law. He was so highly regarded by the governing power that its important officials, among them the wazir Fakhr ad-Daula Abu Ghalib, used to pay him visits. Messengers were sent to him from various parts of the realm carrying large sums of money for him to distribute as alms among his followers. He disbursed a monthly allowance of 160 dinars on the needy among his disciples. There were years when he distributed among the pilgrims to Mecca fourteen thousand dinars. Small wonder that he had so many law students attending his lectures. His true disciples, those close to him, were those who studied under his direction at the masjid called the Masjid of 'Abd Allah b. al-Mubarak, named after its founder the traditionist-jurisconsult and wealthy merchant who died in 181/797, a disciple of the great Syrian jurisconsult Sufyan ath-Thauri and of Malik b. Anas.[158] Ibn Khidr (d.852/1448), long after the advent of the endowed colleges, was receiving great amounts of money for distribution as alms among his students and the needy generally.[159]

c. Mutual Aid

Tanukhi (d.384/994) reported the case of student-jurisconsults who pooled their resources in order to help a fellow student. Because of his great talent, the needy student attracted their attention, and they joined forces in order to supply him with the funds he needed to pursue his studies, one hundred dirhems monthly. The sum was provided for a period of several years, until he finished his studies and returned to his home.[160]

Abu Ishaq ar-Rifa'i (d.411/1020), another youth in need, arrived in Wasit to pursue Koranic studies. The members of the study-circle provided him with his subsistence.[161] He returned in later years to Wasit to succeed the professor who had died.[162]

d. Wealthy Parents

The picture of the student that emerges from the sources is one mainly of poverty and struggle to eke out a living while making his way through college. Unlike the madrasas which were, at this time, on the point of blossoming, the masjids had no stipends for students from endowment income, reserved for staff and maintenance of the building. Among the students, who generally were in financial straits, there were wealthy students who lived in the lap of luxury. Having wealthy parents, they could borrow easily through their professors, from the local merchants when cheques were slow in coming from home. They could easily afford to rent a house to live in, with servant-girls to serve and entertain them.

The following two anecdotes, preserved in the *Munṭazam* of Ibn

al-Jauzi, allow us to get a glimpse of the rich student's lifestyle sometime around the turn of the third/ninth and the fourth/tenth centuries.

The first anecdote concerns a law student who, on being missed by his professor for a rather long period, was summoned to see him. Coming before his professor, the student explained that he had recently purchased a servant-girl, but delay in receiving funds from home and mounting debts in the market-place forced him to sell her. But having done so, he came to realize the extent of his attachment to her. He missed her so strongly that he could no longer work on his legal studies, or concern himself with anything else. The professor then accompanied his student to the person who had bought the servant-girl from the marketplace where the student had sold her. The girl was returned to the student who was allowed to keep her price pending the receipt of funds from home.[163]

The following case involves one of the students of al-Kashfuli (d.414/1023), professor of law of the Masjid of ʿAbd Allah b. al-Mubarak. The student, a native of Balkh, was in financial straits due to a long wait for a cheque from home. He complained to his professor, Kashfuli, who accompanied him to a merchant of their quarter. The merchant was asked to make a loan pending the arrival of funds from the student's home. He invited them to dinner and, when they had finished eating, instructed the servant-girl to bring him a receptacle from which he weighed twenty gold dinars and gave them to the student. Kashfuli thanked the merchant and started out with the student. On leaving, he noticed a change on the student's face. He asked him what was the matter. The student told him that he had fallen for the servant-girl. Returning to the merchant, the professor told him 'We have another problem!' The merchant, on being told of the student's infatuation, presented the servant-girl to the student and said to the professor, 'Perhaps she feels about him the same way he feels about her'. Eventually the student received six hundred dinars from his father.[164]

The generality of students were, however, less fortunate, whether from out-of-town, or natives of the town in which they pursued their studies. It is from among these students that some of the greatest jurisconsults made their mark in the field of law. For instance, Abu ʿAbd Allah ad-Damaghani (d.478/1085) who worked his way up to the top position in Hanafi law, suffered poverty during his student life, often studying through the night aided by the guardsman's lamp.[165] The caliph al-Muqtadir's son is reported to have seen him once studying on the banks of the Tigris, in the shade of the riverside palaces; he gave him a cheque for food and had him come every Thursday to pay him a visit. Damaghani would use part of the cheque to buy books on law. When the Saljuq dynasty took over from the

Buwaihids, he was made chief qadi and founded a dynasty of chief qadis and qadis.[166]

There was some question whether reaching the heights of knowledge was more difficult an achievement for the rich or the poor student. The two sides of the controversy are illustrated in the opposing attitudes of the two Andalusians, Ibn Hazm and Abu 'l-Walid al-Baji (d.474/1081), who were sparring partners in disputation. To justify his frequent defeats at the hands of Ibn Hazm, al-Baji pleaded poverty during his student days: 'You will excuse me; most of my studying was done by the light of the night watchmen's lamps'. To which Ibn Hazm retorted, 'And you will excuse me; most of mine was done on pulpits of gold and silver', meaning that luxury was a far greater deterrent to learning.

No doubt, consensus was more in support of Ibn Hazm's opinion than that of al-Baji. When madrasas came into being with their stipends for students from endowment income, scholars deplored the practice as one that was sure to do great damage to the true spirit of learning. Madrasas, they felt, opened the ranks of studentship to those who were motivated more by monetary gain than by their thirst for knowledge.[167] The matter was put in the following terms by Abu Shama in one of his unpublished works, *al-Kitāb al-marqūm*. He spoke of those 'who content themselves with the outward appearance of law students and the shouting that goes on among disputants, and who say, "Why trouble ourselves when the endowment income of the madrasas is in our pockets."'[168]

e. The Endowed College

The number of students at the Masjid of Shirazi, according to al-Fariqi's autobiographical note, fluctuated between ten and twenty.[169] But there were madrasas whose endowment allowed the mutawalli to increase or decrease the number of students, according to the fluctuations in the income and at his own discretion. Such was the case later with the Shamiya College Intra-Muros in the seventh/thirteenth century.[170] The number was therefore not a constant one.

At the Shamiya College Intra-Muros, there were apparently one hundred resident students. A legal opinion determined that the founder had wanted to have the same number in the Shamiya College Extra-Muros.[171] The number was far greater in the Ashrafiya College. According to the money disbursed to the student beneficiaries annually, it had close to two hundred and forty-five students, both 'working' and 'auditing' (i.e. attending).

Regarding a college whose enrolment was not limited by any stipulation in the deed of foundation, a fatwa was issued in answer to the question: If, in such a college, the qadi or the mutawalli admitted a number of resident students with assigned stipends totalling an amount equal to the endowment income, could any other resident

student be admitted? The opinion of Ibn ar-Rif'a (d.710/1311) was that to do so was not legally permissible. Taqi ad-Din as-Subki concurred with his opinion, provided the deed of the foundation assigned a specified sum for the stipend. But if, for instance, the enrolment consisted of ten law students the amounts of whose stipends were not stipulated, nor was there stipulated a specific part of the endowment income – which is the case with the majority of colleges whose enrolment is not limited by stipulation – then there was nothing to prevent other students from being admitted as residents.[172] In which case, of course, the amount of the student stipend would have to be reduced.

But even with enrolments limited by stipulation, the stipends had to be reduced in years of failing crops. For instance, in 829/1426, according to Ibn Qadi Shuhba, enrolment at the Shamiya College Extra-Muros decreased. Students failed to appear for classes because of the decrease in the amount of stipends resulting from failing crops the previous year. In most colleges, no stipends were paid at all.[173] Thus colleges were going concerns only when the harvests were successful; when they failed, college attendance suffered accordingly.

Students were paid stipends of differing amounts according to the revenues available for disbursement, and following a system of ranking based on the diligence of students of the three usual levels, beginning, intermediate and terminal. The system allowed for grades in-between, identified by the amounts paid. For instance, Subki, in one of his fatwas, discussed ways in which disbursements could be made. He suggested the following system for the Shafi'i Shamiya College Intra-Muros: for the terminal student thirty dirhems; for the intermediate, twenty; and for the beginner, ten.[174] And since there were differences in student performance in each of the three levels, he suggested that the stipends of the terminal students could fluctuate between twenty and thirty dirhems; the intermediate from fifteen to twenty; the beginners from ten to fifteen. These amounts could also drop below ten dirhems and rise above thirty.[175] The mutawalli could also decide to pay the highest level from sixty to forty dirhems; the intermediate, from forty to twenty; and the lowest level, from twenty to five dirhems.[176]

There were certain conditions under which the student could have his stipend forfeited. On the legality of payment to students, under certain circumstances, there were questions which arose early in the history of endowed colleges and continued down through the centuries. An early fatwa was issued by Ibn as-Salah concerning this matter. In a college founded for the benefit of law students, the question arose whether the following students were entitled to stipends from the endowment income: (1) the student who did not attend the course of the professor of law; (2) the student who attended, but did not recite from memory, or study; and (3) the student who

worked by studying alone (i.e., without attending class, or being guided by the professor or the assistants).

Ibn as-Salah answered the three cases as follows: (1) the student who worked in the college in question without attending the course, was not entitled to a stipend, the prevailing custom being that law students had to attend the law course – the custom remained in effect in the absence of a stipulation to the contrary in the deed of foundation; (2) the student who attended the course, and neither recited from memory nor studied, was entitled to a stipend if he happened to be a terminal student (muntahin), and if the founder had not stipulated the need to demonstrate that the lesson had been learned; so also was the student who learned his law from what he heard when attending the course because he understood it and retained it, but he was not entitled if such was not the case: if he did not qualify in one of these ways, he neither belonged to the category of graduates (fuqaha'), nor to that of undergraduates (mutafaqqiha), for whom alone the foundation was established; (3) the student who did not attend the course, but confined his work to studying alone, was entitled to share in the endowment income if he was a terminal student, or was an undergraduate who learned from attending the course but did not study.[177]

The following autobiographical note by the famous muhaddith, Nawawi, is instructive in several respects. 'When I was nineteen years of age', he said, 'my father brought me from Nawa to Damascus in 649/1251; and I became a resident of the Rawahiya College.' This residency was acquired for him by the assistance of the famous Damascene mufti Taj ad-Din al-Fazari (d.690/1291). When Nawawi was brought to Fazari to work under his direction, Fazari took him under his wing and sent him to the Rawahiya College so that he could have a room and receive a stipend (ma'lum). 'I stayed for years', said Nawawi, 'without laying my side to the ground [perhaps he means: hardly sleeping nights in order to study], and my subsistence being nothing more than the stipend [jiraya] of the college.'[178]

Thus a student could live in a college as one of its beneficiaries, receiving room and board, while studying under a professor elsewhere. This was the question of tanzil, the right of residence, a question that comes up frequently in the legal opinions of the jurisconsults. The stipend of this particular college, as implied by Nawawi's remark that he lived on it alone, was a modest one. Notice also the interchangeability of the terms for stipend, ma'lum and jiraya. Fazari (d.690/1291), under whose direction he studied, had a professorship in the Badara'iya College, according to Dhahabi, who said that it was the only professorship he had.[179] This statement implies that its endowment income was also a modest one, like that of the Rawahiya College. He apparently had to send Nawawi for a residency

in the Rawahiya College, either because he did not as yet have the professorship of the Badara'iya, – he was only 25 years of age when Nawawi came to him in 649/1251, or there was no place there for Nawawi.

Competition for residence must have been strong, if one is to judge by the frequency of discussions regarding its nature in the fatwa-literature, at about this time and later, dealing with the nature of college stipends disbursed to its beneficiaries.[180]

III. POSTS, OCCUPATIONS, FUNCTIONS

The following list of posts is not exhaustive. That of the mutawalli has been sufficiently treated in the first chapter, obviating the need for further treatment. In some occupations, a na'ib, substitute, deputy, could be hired by the incumbent; these were usually the posts of mutawalli, mudarris, qadi and khatib, and sometimes those of imam and ra'is. The term na'ib was coupled with that of the post involved to designate its holder. Thus there were the posts of na'ib an-nazar,[181] na'ib at-tadris, na'ib al-qada', na'ib al-khitaba,[182] na'ib al-imama,[183] and na'ib ar-riyasa.[184] The terms designating the holders were also coupled, such as na'ib-mudarris and na'ib-qadi. The deputyship itself was referred to as niyaba and identified by the post itself, such as niyabat an-nazar, niyabat at-tadris, and so on.

Other posts besides that of mutawalli were created for the management of the foundation; their holders worked together with the mutawalli, under his direction, or individually in smaller foundations. These were the posts of qaiyim, mushrif, musharif or a na'ib-mutawalli working as acting mutawalli in an interim period pending the appointment of a mutawalli. There was also the post of katib al-fatwa (pl. katabat al-fatwa), a clerk whose job it was to write the fatwas of jurisconsults; the post of muhdir, a clerk who kept minutes of the proceedings in a litigation; and the wakil, a legal agent, who functioned as a court attorney.[185]

The college of law, whether masjid or madrasa, usually had only one professorship, and in an institution representing two, three or four madhabs, only one for each. This situation accounts in part for the proliferation of colleges for graduating jurisconsults aspiring to professorships; it accounts too for the keen competition for the posts available. Although patrons were generous in founding many institutions, yet there could not be enough of them to accommodate all concerned. Thus not all hopefuls could attain the top posts, those of mutawalli or mudarris, all the more certainly since both posts were often the appanage of a single person, or the founder retained for himself the post of mutawalli.

To alleviate this situation professorships became divisible into halves, thirds and fourths. But this solution was offset by incumbents

holding multiple posts, as many as five, seven, nine, as already seen. Many jurisconsults, often more qualified than the incumbents, became assistants, either as repetitors, muʿids, or assistants-at-large, mufids, a sort of walking-encyclopedia for students in need of extra help and guidance; they also assisted in disputations and the issuing of legal opinions. Many jurisconsults remained foundationers modestly benefiting from the endowment income, as their hopes of ever obtaining a professorial post faded away; their ranks were swollen by the eternal student who, in emulation of his master, the professor of multiple posts, sought to hold down a string of fellowships longer than was needed for his room and board. Whence the recurring fatwas by jurisconsults, indignant at the injustice of the manoeuvre, to protect the bona fide fellows.

Students of the Koran and hadith do not seem to have enjoyed the same privilege as permanent foundationers as the student of law; the sources studied yield no information in this regard. If anything, the privilege seems to have been preserved for law students. The deed of the Farisiya College for Law and Koranic Studies stipulated that students of the Koran who had memorized it were to be replaced by new foundationers.

In spite of all attempts at alleviating the situation, there remained jurisconsults without jobs. Yet they had a job to perform, the supreme job for which the Muslim college par excellence, the madrasa, was brought into being: that of mufti. The muftiship belonged by right to every graduate having received the licence to issue legal opinions. This right lay at the basis of the intellectual's academic freedom, a freedom which, as will presently be seen,[186] became the target of sovereigns who attempted to bring it within their orbit of power.

1. Posts Pertaining to Law

a. Mudarris and Na'ib-Mudarris: Professor of Law and Deputy-Professor of Law

The general term for professor, as already mentioned, was shaikh; and for professorship, mashyakha. They were used with a complement when designating the field involved; for instance, in the field of grammar (nahw), the grammarian (nahwi), when designated as professor, was called shaikh an-nahw, and his post, mashyakhat an-nahw. On the other hand, the field of law had its own terms to designate the professor and the professorship, mudarris and tadris, when these terms were used *without* a complement; otherwise the complement designated the field involved.

A professor of law could hold more than one professorship in more than one college, teaching in one institution and hiring deputy-professors in the others where professorships were held in his name. The term for the deputy-professor of law was na'ib-mudarris, and for the post, niyabat at-tadris. The verb istanāba, in this context, meant

to hire a na'ib. The deputy-professor was supposed to be a master in his field, an accomplished jurisconsult. In later years, when the professor occupied several chairs of law at the same time, and hired deputies to take his place, especially in institutions in different towns, the mudarris paid the na'ib part of the salary and kept the rest. The amount of the stipend was presumably decided between the two involved. There were objections to this kind of manoeuvre, considered to be an abuse of the system, used in order to line the pockets of the principal incumbent while keeping other qualified personnel from occupying the chairs of law as full professors.

Sometimes the term khalifa (deputy, successor) was used as a synonym of na'ib, and istakhlafa as a synonym of istanāba (to hire a deputy). In 402/1012, the qadi Abu 'l-'Ala' Sa'id (d.430/1039) hired a jurisconsult as his khalifa during his absence on pilgrimage to Mecca. This substitute was to teach law in the madrasa and generally instruct the students who frequented it.[187] Likewise the verb khalafahū is sometimes used as a synonym of nāba 'anhū (to act as someone's deputy).[188]

The function of the na'ib was that of being an 'acting-professor'. His qualifications for the post had to be as good or better than those of the professor whom he replaced, according to Haitami.[189] His function was to replace the professor during his absence, or to assume the duties of professor of law in an interim period between two titular professorships.[190] When Ghazzali left Baghdad for Damascus, his brother Ahmad al-Ghazzali (d.520/1126) substituted for him as na'ib.[191] It is quite possible that Ghazzali chose his brother as na'ib because he expected to return to resume his professorship. Compare, for instance, the case cited by Ibn Hajar, where a qadi substituted for his brother as chief qadi of Damascus in order to preserve his post for him.[192]

The critique that Subki makes of the mudarris in his *Mu'īd an-ni'am* affords us a glimpse at some aspects of the professor's functions. If Subki had strong feelings on this subject it was because of the abuses he witnessed in his day. He was particularly upset with professors who lacked sufficient qualifications for his post, or qualified but had an easy-going, permissive nature; and he was particularly anxious about the advanced class of students not being conducted as it should be. Deficient teaching laid open the teaching posts to the unqualified, since professorial performance in the classroom was not sustained at a level that would discourage the unqualified.[193]

> One of the most reprehensible deeds is that of a mudarris who memorizes two or three lines from a book, takes his seat, delivers them, then rises and leaves the classroom. Such a person, if incapable of anything but this amount, is not fit to teach law. Nor is it lawful for him to accept a salary. Indeed, he has neutralized the post, because there is no salary for it [as fulfilled by him].

> Also the resident student-jurisconsults should not be entitled to stipends, because their madrasa's professorship of law is virtually vacant.
>
> If, however, the professor of law is capable of more than that amount, but lightens the burden of study [*yusahhil*] and makes excuses for the students [*yata'auwal*], that is also shameful. For this is also what leads laymen to covet these posts; one rarely finds a layman who cannot memorize a couple of lines.
>
> On the other hand, if learned men were to safeguard learning, and the professor of law among them were to give the teaching of law its full due, by taking his seat, delivering a fair amount of learning, expounding it as a master scholar, by posing and receiving questions, by objecting and responding, speaking at length and speaking well, in such manner that when there is in attendance a layman, or a student beginner, or a student in the intermediate ranks, such a person would know himself to be incapable of accomplishing as much, and would understand that the custom is such that a professorship of law can only be at that level; so also exegesis [the text is uncertain here]. This being the case, the unqualified person would not covet such a level, and laymen would not aspire to take the posts of learned men.
>
> So when we see the ulama take liberties with the law courses denying them their due, turning schooldays into holidays, and when they do appear for lectures confine themselves to one or two questions without disputation nor an attempt to explain, and when we see them upset by the infiltration of the unqualified into the field of legal teaching, and blaming the times and those in power, then, in my opinion, they should be told: You yourselves are the cause of all this by your own behaviour, so the offence is yours alone!

It is plain from Subki's concern that there were no fixed levels of achievement. Each madrasa was governed by its own waqf deed, reflecting the wishes of the founder. But the founder could hardly be blamed. Although he could chose whom he pleased for the professorship of his foundation, he had to go by the reputation of the person he chose. The source of the problem was the lack of a corporation of masters with rules and regulations aimed at keeping the levels of scholarship high. Subki has more to say on the abuses of his day.[194]

> Another matter of concern are madrasas instituted by their founders for the benefit of fellows [fuqaha'] and scholars [mutafaqqiha] of the law, and their professor of law, whether for the Shafi'i, the Hanafi, the Maliki or the Hanbali madhabs. The professor in the college of law delivers lectures in Koranic exegesis, or hadith, or grammar, or theory and methodology, or some other field either because of his incapability of teaching

law, or for some other reason. As I see it, in an institution founded for jurisconsults, the professor's responsibility is discharged only by delivering lectures on law. So if this professor of law does not lecture on fiqh directly he is guilty of embezzlement.[195] We say the same thing with regard to an institution of learning founded for the purpose of teaching Koranic exegesis and where the professor teaches something other than that subject, and the institution founded for grammar when its professor teaches other than grammar. The most prudent conduct in all of this is to deliver lectures in the field of knowledge for which the institution was founded; for if the founder had desired some other field of knowledge he would have named it. However, if the professor delivers lectures, for example, in a college of law most of the time, but varies his lectures some days by delivering some on Koranic exegesis or hadith, or some other field of religious learning, his intention being to give the students a variety which would awaken their interests and determination to learn, there would be no harm in this; still it would be more prudent not to do so.

All of this is conditioned by the fact that the appointee of the institution is qualified in a particular field; as in the examples we gave in a madrasa founded for a Shafiʿi professor of law, or a Hanafi one for example, and for fellows and scholars belonging to that school of juridical thought, and that the founder did not stipulate that the professor should be qualified in other fields besides. If, on the other hand, he stipulates that the professor be qualified in a number of fields as now exist in many institutions in the regions of Egypt, Syria and elsewhere, instituted by the founder for a particular madhab, stipulating, for the professor, qualification in such and such fields of knowledge, for example, Koranic exegesis, hadith, etc. . . . – in such a case, it is my opinion that the professor should vary his lectures so as to cover those fields the knowledge of which was stipulated as part of his qualifications. For if the founder had not intended that these fields be taught, he would not have stipulated that the professor be qualified in them. It is also possible to say that his qualification in these fields was stipulated so that he would be perfectly prepared to reply to the objections that the students could address to him. But the most prudent interpretation is what we have already said.

It is obvious from this passage that some professors were not teaching the field for which they were appointed. Subki was in effect confirming that the wishes of the founder were sacrosanct and the most prudent conduct on the part of the professor would be to act exactly according to those wishes.

Subki spoke of 'objections', of 'questions and answers', etc.,

terminology that belongs to the scholastic method of the summae, such as the *Summa Theologiae* of St Thomas Aquinas, and in the *Wāḍiḥ fī uṣūl al-fiqh* of Ibn 'Aqil.[196] It was this scholastic method that pointed to the essential function of the professor of law, the master jurisconsult. As a scholastic, his function was threefold: the teaching of law (tadris), the issuing of solicited legal opinions (ifta', futya), and disputation (munazara). The term tadris in its broad extension encompassed training in all three functions. The student was taught how to derive the law from the sources in order to qualify for issuing legal opinions; he was taught to be proficient in the field of disputed questions, the objections to his opinions and how to deal with them, through the use of dialectic and the proper procedures in disputation. Such training was necessary for arriving at agreement and achieving ijma', consensus.

These were the essential functions of the master jurisconsult. He could also be qualified in other fields such as wa'z, the art of the academic sermon, Sufism, kalam, grammar, poetry, and the like, perhaps excelling in one or more of them.

b. Assistants to the Professor of Law

Later, under the Ottomans, a post evolved which was higher than that of the mu'id, repetitor, and the name for which was borrowed from the technical vocabulary of earlier times; namely, that of the mulazim, from the verb lāzama, used earlier of the sahib of a professor of law, the verb ṣaḥiba (Form I) and ṣāḥaba (Form III) being synonymous: to accompany someone constantly, to be his associate, his fellow. In Ottoman Turkish, the term signified an assistant functionary and the mulazim of a mudarris signified 'a candidate-professor of canon law'.[197] In Damascus, at the time of the biographer al-Muhibbi (d.1111/1699), the term, not being familiar to his readers, was explained by him as follows, in the biographical notice of the Maula Ibrahim al-Karmiyani (d.1016/1608) who 'served the Maula Sa'd ad-Din . . . and became his assistant [lāzama minhū], following the practice of the Turkish ulama ['ulamā' ar-Rūm]'. Muhibbi then explained: 'This post of assistantship [mulazama] is a technical conventional one which puts its holder on the track for the professorship of law or the qadiship'.[198]

The mulazama in the Ottoman system ranked after the post of mu'id and just before that of mudarris, as one can see from the following passages in Muhibbi: 'He went to Constantinople, became a mu'id for the law course [dars] of al-Maula Abu 'l-Laith, the professor of law of Aya Sofya, then became his mulazim [thumma lāzama minhū], and succeeded him to the professorship of law [wa-darrasa ba'dah]'.[199] In another passage, al-Muhibbi writes: 'He travelled to the Turks [ar-Rum] and became a mulazim [wa-lāzama] according to their practice ['alā qā'idatihim], and he

became professor of law then became a qadi . . . he was then appointed professor of law in the Madrasa Ahmadiya, at first in the grade of kharij, then was given the grade of dakhil'.[200] Redhouse explains al-kharij as 'the seventh grade of university professors', but fails to give the grade of dakhil, which must have been the eighth and last of the grades of professors of law in the Ottoman madrasas.[201] Another passage shows the mulazama as coming after the post of mu'id: 'he was his mu'id, then became his mulazim' (kāna mu'īdan lahū wa-lāzama minhu).[202]

1) Mu'id, Repetitor

Next to the mudarris and na'ib, there was the mu'id, repetitor, whose post was referred to as i'ada, repetition. His function was to repeat the law lesson of the mudarris, to explain it so that it was understood by the students. He could himself be a graduate student, or an accomplished jurisconsult without his own chair of law.

Subki cited the functions of the mu'id as follows:[203]

> It is the responsibility of the repetitor to perform certain functions in addition to hearing the law course: to explain the lesson to some of the students, to be of use to them, and to perform that function required by the term repetition. If he were not to perform these functions, there would be no difference between him and the fellow [sahib], and he will not have acknowledged God's grace for meriting the post of repetition.

Thus the mu'id could still be a student of law in the college; he was an advanced student, a fellow who was qualified to help the lower-classmen in their lessons. Besides attending the course of the professor, he repeated the lesson to the undergraduates and helped those who had problems understanding the lesson. He was a faqih, graduate student, and had the extra functions already mentioned.

In the college of law, whether a masjid or a madrasa, there was the post of i'ada. The repetition was done for any one or all of the legal studies taught by the professor. It was once thought that the function of mu'id was one that came only with the advent of the madrasa and did not exist in the mosque.[204] But this post was peculiar to the field of law itself, not to the institutions in which it was taught. For instance, Abu Ishaq ash-Shirazi, a student of law of Abu 't-Taiyib at-Tabari, became his mu'id well before the foundation of the Nizamiya of Baghdad, and this was in the masjid of at-Tabari.

In a biographical notice on Abu 'l-Hasan 'Ali al-Fariqi (d.602/1206), Ibn as-Sa'i (d.674/1275) gave some details regarding the career of this professor of law, throwing light on posts pertaining to law.[205] Fariqi was born in Maiyafariqin, studied law and hadith in Tibriz, then went to Baghdad where he became a sahib, fellow, of the Sufi Abu 'n-Najib as-Suhrawardi and learned the art of the academic sermon.

> He then resided in the Nizamiya Madrasa as a student of law [mutafaqqih]. He was made a repetitor, issued legal opinions, and worked [ashghala] the undergraduate students of law [mutafaqqiha].... When Abu Talib ʿAli b. ʿAli al-Bukhari was appointed as chief qadi, he appointed al-Fariqi as his deputy [istanabahū fī 'l-ḥukmi ʿanh], and accepted him as a shahid-notary . . . and al-Fariqi continued to act as his deputy and to function as shahid-notary until he handed in his resignation . . . in 583 as deputy-qadi, and ceased to perform the function of shahid-notary, confining himself to the repetitorship of the Nizamiya Madrasa. He then became deputy-professor [nāba fī 't-tadrīs] there after the death of its professor the Shaikh Abu Talib al-Mubarak b. al-Mubarak al-Karkhi, until he was appointed to the professorship of law of the Madrasa founded by the mother of the Caliph an-Nasir li-Din Allah, adjacent to the Tomb of Maʿruf al-Karkhi.

Thus Fariqi's career proceeded from the basic law course, to the suhba of Sufism, to graduate resident of the Nizamiya law college, to repetitor, to mufti, deputy-qadi, shahid-notary, to deputy-professor at the Nizamiya, and finally professor of law of another madrasa.

Before him, the career of Abu Ishaq ash-Shirazi proceeded along the following lines. He first studied fiqh in Fars, then in Basra, before going to Baghdad in 415 / 1024. After finishing his study of fiqh under the direction of Abu 't-Taiyib at-Tabari, he became the latter's assistant as repetitor (muʿid). In 430 / 1039, he became a professor of law and taught in a masjid in the fashionable East Side quarter of Bab al-Maratib. In 459 / 1057, he assumed the chair of law at the newly founded Nizamiya Madrasa as its first incumbent, and held that post for seventeen years until he died in 476 / 1083.[206]

Daʿwan b. ʿAli al-Jubba'i (d.542 / 1147), after studying law under the direction of Abu Saʿd al-Mukharrimi (d.513 / 1119), became his repetitor in the latter's course on khilaf, disputed questions in law, besides teaching the Koran and hadith.[207] Speaking of Ibn al-Jauzi, Ibn Rajab reported that he was the repetitor of Abu Hakim an-Nahrawani (d.556 / 1161), under whom he had studied law and intestacy. Nahrawani held two professorships of law; on his death-bed, he named Ibn al-Jauzi as his successor to both posts.[208] Abu 'l-Hasan ar-Rumaili (d.569 / 1174) was hired as repetitor in the Nizamiya Madrasa and appointed as trustee of its endowments (mutawalli li-auqāfihā). He was also a candidate for the post of professor of law there, and for the post of chief qadi, but died before receiving these appointments.[209] Kamal ad-Din al-Maghribi (d.650 / 1252), a resident of the Rawahiya Madrasa in Damascus had the post of repetitor under Ibn as-Salah for a period of twenty years.[210]

The repetitor had to meet the minimum requirement of the basic law course in order to qualify for the post. He was usually the most advanced among the fellows of the professor. He could, however, be an accomplished jurisconsult. Shihab ad-Din ar-Rumi (d.705/1306), for instance, was appointed in Cairo as the Tughujniya's first professor of law. A waqf deed was later discovered stipulating the post for the founder's son. Having had to resign his post, Rumi was appointed as repetitor in the Madrasa Mansuriya.[211]

Not all institutions of learning where law was taught had a post for the repetitor. For instance, the Ashrafiya College of Hadith Extra-Muros had a professorship of law, in addition to its professorship of hadith; Nu'aimi reports that it also had a post for a repetitor (wa-lahā i'āda), implying that other institutions did not necessarily have one.[212] On the other hand, a madrasa could, for a number of years, function with repetitors only. This was the case of the Nasiriya Madrasa in al-Qarafa (The City of the Dead)[213] near Shafi'i's Dome in Cairo. For thirty years, this madrasa functioned with ten repetitors until 678/1279, when the chief qadi Muhammad b. Razin al-Hamawi (d.680/1281) was appointed as its professor of law.[214]

2) Mufid, Docent of Law

After the mu'id, there was the post of the mufid, referred to as ifada. The mufid was also a graduate student, or an accomplished jurisconsult,[215] to whom beginners or students less advanced than he could turn for help with their lessons. The mufid's position appears to have been subordinate to that of the mu'id, supplementary to it and not as essential to the madrasa.

Unlike the na'ib and the mu'id, whose posts pre-supposed that of the mudarris, the mufid, whose function was to impart useful knowledge (ifada) to students, could be a member of the staff of an institution of learning, or could do such work privately. The terms ifada and mufid are often used in connection with other terms which throw some light, though not as much as one would hope, on the post or activity and its functions.[216]

According to Subki, the mufid had the obligation of pursuing research resulting in useful knowledge for students of the law, research over and above that which is done by ordinary students of the law. Otherwise, Subki said, the mufid would not be fulfilling his obligation, the term ifada would lose its meaning, and his acceptance of remuneration without performing this function would be unlawful.[217]

In Subki's list, the function of mufid is treated after that of the mu'id, perhaps indicating it to be a step below it. The mufid could therefore be the graduate student who, by doing more research than the regular run of students, was in line for the mu'id's post. He derived useful knowledge (fa'ida) from his research and passed it on to the other students. But the level of his knowledge could be such that not

only did he 'benefit' the undergraduates of the institution, but also served as a noted scholar to whom other scholars repaired for answers and solutions to difficult questions and problems. Such, for instance, was the case of al-Khawarizmi (d.c.560/1165), of whom Yaqut wrote that learned men of great reputation used to seek his opinions regarding difficult problems.[218]

The term mufid is used for the fields of law, hadith, and Koranic studies. It was a regular post in those institutions whose waqf deed provided for it. For instance, Ahmad al-Ghaznawi (d.593/1197) served as mufid of the law course of the Hanafi jurisconsult al-Kasani (d.587/1191), author of the legal work *al-Badā'i' fī tartīb ash-sharā'i'*.[219] A disciple of Imam al-Haramain, after studying law with him, devoted all his efforts to benefiting others (ifada) with his knowledge.[220] Another instance is that of the Hanbali polymath Ibn al-Jauzi. He had studied law under az-Zaghuni (d.527/1133) and after the latter's death, under Abu Bakr ad-Dinawari, Qadi Abu Ya'la the *younger* (d.560/1165) and Abu Hakim an-Nahrawani. He then became the mufid of the madrasa.[221]

Speaking of al-Wahidi (d.468/1076), Yaqut wrote that he assumed the post of mufid, then that of professor of law (tadris) for a number of years, and produced a number of leading scholars who studied under his direction *attaining the level of mufid*.[222]

On the other hand, it is quite clear that in cases such as that of Muhammad b. 'Ubaid Allah al-'Ukbari (d.496/1103), nicknamed the 'mufid of the Baghdadians' (mufīd ahl Baghdad), his post of mufid pertained to the study of hadith, not law. He was a mufid in hadith and a mustamli, that is, an assistant to the professor of hadith.[223] Another mufid of hadith was al-Mubarak b. Kamil al-Khaffaf (d.543/1148), nicknamed 'the mufid of Iraq'.[224] Ibn Hajar gave some insight into the function of the mufid in the field of hadith, when he wrote of a mufid as beginning his function by having students recite to him from memory, and by correcting their recitation and commenting on the memorized text. He did this in the Mosque, without pay, implying that the post was usually a paid one.[225]

The author of *Siyāq*, 'Abd al-Ghafir al-Farisi, said that al-Baghawi was his mufid in hadith.[226] The teaching of hadith was at times said to have been done according to the ifada of a muhaddith; as for instance, someone teaching hadith on the authority of a certain class (tabaqa) of muhaddithun with the observations of as-Samarqandi (bi-ifādati 's-Samarqandī).[227]

The verb afada could also apply to the field of Koranic science. The Koranic reader ar-Ramishi (d.489/1096) was appointed by Nizam al-Mulk as muqri' to teach in the mosque built as part of the Nizamiya of Nishapur; and he kept on imparting useful knowledge (lam yazal yufīd) to the end of his life.[228]

c. Ra'is

This post appears to have been an elective one in the city of Nishapur. As in the case of the posts of qadi, mudarris and mutawalli, a na'ib could replace the ra'is when absent or his post vacant. Abu Sa'd ash-Shamati (d.454/1062) was 'elected by the Shaikhs as na'ib-ra'is' (ikhtārahū 'l-mashāyikhu li-niyābati 'r-riyāsa) in Nishapur for an undesignated period of time (mudda).[229] The same source tells about Abu Nasr Ahmad b. Muhammad b. Sa'id (d.482/1089) becoming the head-ra'is, ra'is ar-ru'asa', of Nishapur, c.430/1039.

The qualities required by the ra'is, or na'ib-ra'is, can be inferred from the notices devoted to them by 'Abd al-Ghafir al-Farisi in his *Siyāq*. In speaking of the ra'is, Abu Nasr, the biographer said that he held his post until such time as he began to develop a spirit of partisanship and zeal for his own madhab, a certain wilfullness and stubborness unworthy of leading personalities, and rivalry with his peers of the various factions, so much so that the situation led to his alienation from the ulama and a diminishing of his prestige.[230] It follows from this that the election of the ra'is by the shaikhs was one in which the ulama of the city, of all factions participated, not merely those of his own madhab.

In his notice on the election of the na'ib-ra'is, the biographer stated that he was elected for his enlightened administration, his sense of appreciation for the rank and standing of the various personalities among his peers, and for his good offices in mediating disputes.[231]

Thus the riyasa, or deputy-riyasa, in Nishapur was a function performed by one of the ulama who elected him, as a primus inter pares, to mediate their disputes and keep the peace among them. It would appear to have been a post of great prestige, and would therefore deserve further study. It appears to have been peculiar to Khurasan, unknown in Iraq.

d. Mufti, Jurisconsult

Al-Khatib al-Baghdadi listed the qualifications of a mufti as follows.[232] He had to be an adult, the opinion of a minor having no legal authority. He had to be of sound mind, trustworthy and of good moral character, the legal opinion of a fasiq being unacceptable regardless of his legal competence. He could be a freeman or a slave; the validity of a legal opinion being unaffected by the status of slavery. He had to know the legal prescriptions (ahkam) and their four sources: the Koran, the Sunna, the consensus of the pious ancestors and their differences of opinion, and analogical reasoning. Al-Khatib al-Baghdadi laid heavy stress on the mufti's need for constant discussion with scholars of the law, for the collection of books, and constant study and reference to them. Understanding, good memorization and ready retrieval were all stressed by Baghdadi for the mufti.

Shafi'i required a thorough knowledge of the four sources. If the mufti's knowledge fell short of the prescribed sciences, he could, according to Shafi'i, teach law, but could not issue legal opinions.[233] Thus the level of mufti was considered to be that of the highest achievement in legal science.

On the other hand, the mufti, in contradistinction to the professor of law, did not need to have a prodigious memory. To give a solicited legal opinion he could, if he so wished, refer to his books and take his time in writing his opinion. The professor of law, however, according to the best teaching tradition, was called upon to teach without the use of books. For instance, when Abu 'l-Hasan al-Karkhi (d.340/952) had to retire from teaching law and issuing legal opinions because of a paralysing stroke, he gave the succession of his professorship to Abu 'Aliash-Shashi (d.344/956), and of his muftiship to Abu Bakr ad-Damaghani, having always said that none of his disciples had a better memory than ash-Shashi.[234]

The mustafti, or layman soliciting the mufti's fatwa, could do so in person or by messenger. He was to state his question clearly, written preferably on a large sheet of paper giving the mufti adequate space to develop his opinion. As for the mufti, he was to require that the question be stated clearly. In cases of doubt or ambiguity, he could require the presence of the questioner before consenting to answer the question. Al-Baghdadi cited an anecdote indicating the advisability of using vocalization and diacritics in order to avoid unnecessary misunderstanding.[235]

Ibn 'Abd al-Barr (d.463/1071)[236] cited Malik's answer to the question 'Who may issue legal opinions?' as follows: 'He alone is authorized to issue legal opinions who knows the differences of opinion of the jurisconsults.' And to the question whether these differences of opinion were those of the rationalists, Malik answered in the negative; what had to be known were the differences of opinion held by the Companions of the Prophet, and the abrogating and abrogated verses of the Koran and of hadith. With this knowledge a jurisconsult could proceed to issue fatwas.

Ibn as-Salah, in his work on the mufti,[237] still in manuscript, described the independent mujtahid (al-mujtahid al-mustaqill) as one who personally, through his own legal scholarship, derived the legal prescriptions (ahkam) from the sources of the law (al-adilla ash-shar'iya), independently of other jurisconsults and without being bound by anyone else's thesis (min ghairi taqlīdin wa-taqayyudin bi-madhhabi aḥad).

Among the earliest authorizations for ifta' was that given by Ibn 'Abbas to 'Ikrima. After having taught 'Ikrima the Koran and hadith, Ibn 'Abbas authorized him with the words: 'Go forth and issue legal opinions to the people' (inṭaliq fa- 'fti 'n-nās).[238] With the passage of

time, legal studies became more sophisticated, and the time required to master them prolonged, before one could hope for the personal authorization of his master to issue fatwas and teach law.[239]

Legal opinions when issued in writing were either in the hand of the mufti, or dictated by him; in either case, the fatwa bore his own signature.[240] Some institutions had writers or scribes of legal opinions (katib al-fatwa, pl. katabat al-fatwa), as well as those who kept the minutes of the proceedings in a litigation (mahadir ad-da'wa), called muhdir.[241]

In the best tradition of Islam, academic freedom was nowhere more clearly visible than in the jurisconsult's practice of issuing legal opinions. The mufti had to practise his own ijtihad, his private judgment in arriving at authoritative answers to questions addressed to him, answers based on the sources of the law. In doing so, he had to avoid taqlid, servile imitation of other jurisconsults. Furthermore, in the best tradition of ijtihad, he had to act independently of all outside forces, including his own madhab, and especially the sovereign power.

Properly and legitimately used, the fatwas of muftis exercised great influence over the actions of the sovereign. For this reason, the sovereign always tried to attract muftis into his camp to use them to his advantage, and to silence the refractory among them.

The mufti was the product of a system of education privately endowed. He owed nothing to sovereign power as such. He could interpret the religious law independently of the sovereign power and of even his own madhab. He was alone responsible for his legal opinions, and his responsibility was to God. But sovereign power finally succeeded in creating a post for the mufti and thus placing him in its pay. The first government appointment of a mufti appears to have been that made in Damascus with the creation of Dar al-'Adl, House of Justice, in the latter part of the seventh / thirteenth century, or the first part of the eighth / fourteenth century. The first appointee appears to have been Sharaf ad-Din b. Sallam (d.717 / 1317), a well-known disputant of his day and professor of law in the Shafi'i madrasas, al-Jarukhiya and al-'Adhrawiya; he had also been a repetitor (mu'id) in the Madrasa Zahiriya.[242]

Although this action by the government did not wrest ifta' from the hands of the jurisconsults – the legal opinions of the appointed muftis had no more legal authority than those of an independent mufti – it created and institutionalized a permanent cleavage between independent jurisconsults and those in the pay of the sovereign. This post of mufti was later adopted by the Ottoman government and the practice of appointing such muftis was continued down to modern times.

The independent mufti was remunerated for his legal opinion by the person soliciting it; many muftis performed the service without

charging a fee, especially when they had other means of support. The government-appointed mufti collected a salary and presumably did not charge a fee. Some independent muftis sent away those who expected a fatwa gratis.[243] This practice tended further to weaken their position and silence their voices in the community.

e. The Qadi

In contradistinction to the mudarris, who was named ordinarily by the founder of the college, the qadi was appointed by the caliph; that is to say, that the chief qadi (qadi 'l-qudat) was so appointed and he in turn, by delegation from the caliph, appointed qadis subordinate to him in various parts of the city and in outlying districts.[244]

The interesting thing about the qadiship is that many jurisconsults of high repute are known to have refused to accept an appointment in spite of the insistence of the caliph. Others accepted appointment after having refused, but only with the proviso that certain conditions were met. On the other hand, there were those who offered large sums of money for the post.

The first madhab to be involved with the qadiship was that of the Hanafis. It was not until ʻAtaba b. ʻUbaid Allah al-Hamadhani (d.350/961) that the first Shafiʻi accepted to become qadi. He held the post for the East Side of Baghdad, becoming thereafter chief qadi in 338/949.[245]

On the other hand, it would appear that a Shafiʻi had accepted this post earlier still. For Shirazi reports on the authority of his professor of law, Abu 't-Taiyib at-Tabari, that Abu ʻAli b. Khairan (d.320/932) used to blame the great Shafiʻi Ibn Suraij for accepting the post, saying: 'This matter was never indulged in by our companions; it was prevalent only among the followers of Abu Hanifa.'[246]

Abu Ishaq ash-Shirazi wrote of the qadi Abu ʻUbaid b. Harnawaih (d.317/929) that he was offered appointment as qadi and refused. The caliph's wazir then put him under house arrest. When the learned community complained, the wazir explained that he wanted it said of Ibn Harnawaih that he was put under house arrest but still refused to accept appointment as qadi. This manoeuvre may have made it possible for the jurisconsult to accept the post, with the title of qadi.[247]

The prevailing custom was to avoid the post, because it meant accommodation with the holders of power, hindering adjudication in accordance with the principles of the religious law. On the other hand, others sought the post avidly. When the Hanafi chief qadi Abu ʻAbd Allah ad-Damaghani died (in 478/1085) – the biographer added parenthetically that great amounts of wealth used to be sent to him from outside of Baghdad – his son sought to succeed him and, to this end, offered great sums to the caliph. The caliph, in his desire to avert suspicion that his posts were for sale, offered the post to the Shafiʻi Abu Bakr ash-Shami,[248] who was known for his righteousness.[249]

The post of chief qadi as well as that of mudarris in a wealthy college were considered by some of the candidates as worthy of being bought, for incumbents could count on recuperating the money. The chief qadi would recuperate it from wealth brought to him from many quarters,[250] and the mudarris from the endowment income of the college where he was also the administrative head. This was one of the main reasons why, in such posts, the incumbents were frequently fired and replaced by others less tempted by illicit monetary gain.

When the qadi was a master-jurisconsult, it often happened that he also held the professorship of a college of law. In fact, Damascus had three Shafiʿi madrasas, founded in the seventh/thirteenth century, referred to as 'the Madrasas of the Magistracy' (madāris al-qaḍā'), whose professorships were held by Shafiʿi qadis: the two Shamiya Madrasas, Intra- and Extra-Muros, and the Zahiriya Extra-Muros.[251] But holders of the office of qadi were not always sufficiently expert in the law to teach it. Nevertheless, such qadis did manage to be appointed as professors of law. Dar al-Hadith al-Ashrafiya Extra-Muros, in Damascus, had in addition to its chair of hadith, a chair of law which was customarily held by a Hanbali qadi, and the custom remained in effect even when the appointee lacked the necessary qualifications.[252]

Through the post of qadi the sovereign was able to interfere with the free process of consensus among the independent doctors of the law. The mufti's fatwa was but an *opinion* which, in order to gain the sanction of consensus in the community, had to confront other opinions of other doctors of the law in the arena of disputation and triumph over them. On the other hand, the qadi's hukm was a decision, a judgment, which, in putting an end to differences of opinion, put an end also to the free play of ideas leading to the strongest opinion accepted by the consensus of the community.[253]

f. The Shahid-Notary, and other Auxiliaries of the Qadi

Among the posts available to the student on successful completion of his legal studies was that of the shahid (pl. shuhud), a professional notary witness.[254] The post was referred to as the shahada.

This post came under the jurisdiction of the chief qadi to whom the jurisconsult applied for acceptance. Like the qadi, the shahid frequently held the post of notary simultaneously with a professorship of law.[255] He was often both qadi and shahid.[256] Although the post of shahid was of a level subordinate to that of the qadi, it sometimes happened that scholars of great repute practised it.[257] The shahid dressed as a magistrate, including the turban (ʿimama) and the garment called tailasan worn over the shoulders.[258]

In the sources relative to jurisconsults, the phraseology designating appointments to the post of shahid included the terms samiʿa shahādatah (literally: 'he heard his testimony') and qabila shahā-

datah (literally: 'he accepted his testimony'), in reference to the chief qadi who appointed the candidate to the post; and shahida 'inda (or, elliptically, shahida; literally: 'he testified in the court of . . .'), in reference to the candidate appointed. The chief qadi admitted the candidate as shahid in his court, presumably after a qualifying exam, or on the basis of his qualifications in the field of law. The probity of the candidate as a notary-witness was passed on by a jurisconsult whose probity was beyond question.[259]

Like the qadiship, the shahada was refused by some, while others avidly pursued it. The two jurisconsults Abu 'Ali al-Hashimi, in 428/1027, and Abu Muhammad at-Tamimi, in 447/1055, both already shahids, refused to continue as such under a newly-appointed chief qadi.[260] Al-Hashimi had his refusal witnessed by thirty shuhud. In retaliation the new chief qadi declared him unfit for the post and had his declaration witnessed by twenty shuhud.[261] In the case of Tamimi, the new chief qadi, Damaghani, personally asked him to reconsider, but to no avail.[262] Others who were solicited for the post refused to accept appointment.[263]

On the other hand, there were those who actively sought the post with the help of influential mediators, and bought it by disbursing large sums of money. Chief qadis benefited in the process. In 382/992, for instance, on acceding to his post, the chief qadi dismissed a great number of shuhud, then proceeded to readmit them, receiving a remuneration in each case.[264]

When the appointee had obtained this post by paying for it, he sought to recuperate the money he had disbursed. For instance, in 525/1131, three shuhud-notaries were flogged for having accepted bribes in return for falsifying their testimony.[265] In 557/1162, auxiliaries of the qadi were enjoined from taking bribes, and fees for drawing up formal documents were regulated: two habbas[266] for the shahid-notary, one for the court clerk (muhdir) and two qirats for the legal agent (wakil).[267]

The field of shahada was both a trade (sina'a) and a science ('ilm).[268] It involved the composition of formal legal documents, substantive knowledge and good calligraphy. Some shuhud-notaries, experts in their field, and calligraphers of renown, were known to have amassed large fortunes from plying their trade.[269] Even those who were neither experts nor good calligraphers managed to make a good living.[270]

Some notaries were known to have practised for long periods of time; for instance, a disciple of Shafi'i, Yunus b. 'Abd al-A'la', who lived to be ninety-four, kept his post for sixty years, from the death of Shafi'i to his own in 264/878.[271]

g. Mutasaddir

1) Terminology

The verb taṣaddara, from which the active participle mutasaddir is derived, means to advance oneself or be advanced to the foremost place. It is synonymous with jalasa ṣadran, to sit in the highest or foremost place, to go to the head of the class, in speaking of a student, ṣadr meaning chest, bosom, and by extension, first, foremost, leader.[272] Another term used synonymously with taṣaddara was taṣaddā: to set oneself to do something, to undertake or dare to do something, to put oneself up, or be put up, for the function of teaching.[273] The second form of the verb and its passive participle are also used: ṣaddara, to place someone in the foremost place, and muṣaddar, one placed in the foremost place. In a case where the professor died, the disciple who took his place had to defend his tenure by engaging in a disputation with another disciple. The latter had heard of the death of the professor, and so presented himself for the disputation, challenging the incumbent. The new occupant of the chair, conceding defeat, relinquished his place to the victor (ṣaddarahū mauḍiʿah).[274] Elsewhere a professor was referred to as ash-Shaikh al-muṣaddar.[275]

The verb taṣaddara was originally used of scholars who, without licence, taught prematurely. This practice was naturally frowned upon and treated as an aberration. A biographer, for instance, referred to such a person as setting himself up to teach without being promoted to that position by anyone (taṣaddara li-nafsihī min ghairi an yarfaʿahū aḥad).[276] Ibn al-Jauzi warned against such premature teaching: man taṣaddara wa-huwa ṣaghīr, fātahū ʿilmun kathīr (he who sets himself up to teach while still a neophyte, forfeits much knowledge).[277] This practice was attributed not only to the premature, but also to the unqualified as described by this fifth/eleventh century verse, indicating that the practice was rather frequent:

Taṣaddara li't-tadrīsi kullu muhauwasin
Balīdin yusammā bi 'l-faqīhi 'l-mudarrisi.

(Every crazy, dull-witted fool, / Who has learned some law in school, / Has set himself up to teach it, / Styling himself jurisconsult.)[278]

2) Tasdir: A Regular Post

These terms, used in the early sources, began to take on a technical meaning especially in Damascus, where tasdir was spoken of as a regular post, particularly in the Umaiyad Mosque. Although the term mutasaddir was a fifth form active participle, the post itself is not designated by the fifth form infinitive noun, but rather the second form tasdir, on the analogy of tadris, and tahdith, for the teaching of law and of hadith, respectively. Subki did not mention this post in his *Muʿīd an-niʿam*. The reason for the omission could well have been that Subki's purpose was to point out the duties, faults and pitfalls of

various posts. The functions of the mutasaddir were covered by what he had said of the other personnel. In any case, there can be no doubt that tasdir was a post distinct from others. Subki's father mentioned it in a legal opinion in which he distinguished it from the professorship of law and the muftiship.[279]

Elsewhere, tasdir was referred to as being a post (wazifa, pl. waza'if, and jiha, pl. jihat) and distinguished from the posts of tadris and i'ada, the professorship of law and the repetitorship, respectively.[280] Thus when the sources designated a tasdir as being for ifta' (the issuing of legal opinions) and tadris (the teaching of law), the term tadris related to the function, not to the post, of teaching law.

3) Tasdir and the Halqa

Tasdir was cited in the sources as a post in the jami'. Ar-Rifa'i was cited taking up a post as sadr in the jami' of Wasit.[281] Al-Adhru'i had a tasdir-post in the Umaiyad Mosque of Damascus;[282] as also did Jamal ad-Din b. Qadi Shuhba (d.789/1387),[283] and al-Lubiyani,[284] and many others cited in Nu'aimi's *Dāris*.[285]

The appointment to a tasdir in Syria and Egypt was analogous to that of a halqa in Iraq and other eastern parts of Islam. And, as was the case with the halqa in Baghdad, for instance, the tasdir in Damascus was cited as existing in the Mosques, not in the madrasas. Furthermore, as was the case with the halqa in Baghdad, the tasdir in Damascus was involved with one or more of a variety of subjects: Koranic studies, hadith, law, legal theory and methodology, dogmatic theology, grammar, adab-literature, and the issuing of legal opinions.[286]

In the Mosques of Damascus and Cairo there were many posts of tasdir designated specifically for the teaching of the Koran. Nu'aimi states that at the time of writing his *Dāris* (in the first quarter of the tenth/sixteenth century), there were seventy-three mutasaddirs whose function it was to teach the Koran (li-iqrā'i 'l-Qur'ān).[287] Maqrizi stated that al-Hakim instituted numerous mutasaddirs in his Mosque in Cairo for this same function (li-talqīni 'l-Qur'ān).[288]

4) Mutasaddir and Mufid

The function of the mutasaddir recalls that of the mufid. The term mufid points directly to the function of its holder, namely ifada, imparting *useful* knowledge, *helping* others in acquiring knowledge. The mufid imparted fawa'id (sing. fa'ida), *useful* remarks, notes, observations. One of the functions of the mutasaddir was that of ifada, *availing* others of his knowledge, of his *help* in their acquisition of knowledge. In reporting that al-Hakim appointed 'Ala' ad-Din al-Qunawi, in 380/990, to the post of tasdir in his Mosque in Cairo, Maqrizi cited the post as being for the purpose of ifādat al-'ulūm, being *useful* to others in their acquisition of the religious sciences, *helping* them in acquiring the religious sciences.[289] Ibn al-Muna

(d.583/1187) was cited by his biographer as having had a post of tasdir 'for teaching law, working the students, and *helping* them in acquiring *useful* knowledge'.[290] Timani (d.815/1412), who acquired a post of tasdir in the Umaiyad Mosque of Damascus, was cited as having *benefited* a number of jurisconsults.[291]

5) Tasdir: A Paid Post

The basic meaning inherent in the terminology of this post would seem to convey the impression that the holder of the post may not have been a beneficiary of a waqf: taṣaddara and taṣaddā, as already mentioned, have the reflexive meaning of advancing oneself, setting oneself up to do something. But this was not the case as will be seen presently. It is likely that those who taught as mutasaddir in their own homes, independently of a Mosque, collected fees from those who benefited from their guidance. For instance, when Shams ad-Din b. al-Jazari (d.827/1424) was asked to step down from his tasdir post in the Umaiyad Mosque in Damascus, he set up shop, presumably at his home, for *working* students in a variety of subjects, and presumably collected fees from them.[292] Other scholars have been known to use their own homes for the purpose of *working* the students.[293] And others still were known to do so without collecting fees, the implication clearly pointing to the practice of collecting fees from students as being normal.[294]

On the other hand, the Mosque-affiliated mutasaddir was definitely a beneficiary of the Mosque's waqf, receiving a stipend for his services. The status of beneficiary was not only that of the mutasaddirs whose function was to teach the Koran, but also those whose function it was to teach one or more of the various religious sciences and their ancillaries, and to *work* (ishghal) the students in these subjects. This is brought out clearly in a passage relating to the Umaiyad Mosque of Damascus. The share of the waqf income relating, at least, to the mutasaddirs, was separated from the funds designated for the repair and redecorating of the Mosque. On the 10th of Shauwal, 814 (25 January 1412) the Mamluk sultan visited the Umaiyad Mosque, performed the ritual prayer, and ordered that the interior of the east and west walls should be decorated with marble tiles. Money for the purpose was to be taken from the shares of the mutasaddirs in the waqfs of the madrasas (zawiyas) in the Mosque. This exaction brought hardship on the mutasaddirs, 'especially those giving all their time to *working* on religious science'. The following exchange between the sultan's representative and the mutasaddirs was recorded by Nu'aimi.[295] The representative addressed the mutasaddirs, saying: 'How can it be lawful for you to collect stipends from the Mosque when it is in a state of disrepair?' Their answer was, 'The branch of mutasaddirs is independent of the reconstruction of the Mosque'.[296] 'You were not in attendance in the Mosque during the

months of Sha'ban and Ramadan!' – 'We were in our homes, *working* the students of law and issuing legal opinions.' – 'The issuing of legal opinions benefits laymen; that is not enough!' Then, turning to one of the mutasaddirs, he singled him out, saying: 'You are an old man, on the edge of your grave; I want you to transfer what you have stored in your breast to the breast of this man', and he indicated a student standing nearby. The matter was finally settled by taking from each mutasaddir two-thirds of one month's waqf benefits.[297] Thus the post of mutasaddir was held by persons who could be well-advanced in age, who were stipendiaries of the Mosque's endowment income, and who *worked* the students of law and issued legal opinions.

6) Tasdir and Ishghal / Ishtighal

The terms ishghal and ishtighal were frequently connected with the function of the mutasaddir, and were related to a variety of subjects. The active participle, mushtaghil, has already been mentioned as designating the working student, in contradistinction to the mustami', or auditing student (i.e., one merely attending lectures).

These two infinitive nouns (masdar), derived from three radicals – *sh-gh-l* in the fourth and eighth forms respectively – signify the *work* which the instructor *causes* (ishghal) the student to do, and the *work* which a student or master does on his own (ishtighal). This latter term was frequently used technically for both meanings. R. Dozy gives the following two meanings for the first form: yashghalu 't-talaba, il formait ses élèves (he schooled, trained, his students); and yashghalu fi 'l-fiqh, il donnait des leçons de jurisprudence (he gave lessons in jurisprudence), the second of which is not strictly correct, because the texts, as will be seen presently, made a distinction between the activity of *working* the students (ishghal) and the lecture or lesson (dars, pl. durus) in law. Moreover, in Dozy's two examples the verb should more properly be read in the fourth form since the texts are consistent in the use of ishghal as the infinitive noun.[298]

For the eighth form, Dozy gives the following meanings: *ishtaghala*, with the prepositions bi or fi, travailler à (to work at); and étudier (to study) for kānat lahū ḥalqatu 'shtighālin, which, with the preposition 'alā, means sous un professeur (under the direction of a professor). Ordinarily, ishtaghala 'alā did mean to study under the direction of; but a halqat ishtighal also meant, according to the text, a study-circle in which the instructor directed the work of a student, for the halqa was headed by the instructor who conducted the activity of ishtighal.[299]

Thus the eighth form had a transitive meaning when coupled with halqa. The following text makes this clear: kāna lahū fī 'l-jāmi'i ḥalqatun li 'li 'shtighāli wa 'l-fatwā naḥwa thalāthīna sanatan mutabarri'an lā yatanāwalu 'alā dhālika ma'lūman (he had a halqa for ishtighal and fatwa for about thirty years which he conducted

gratis, refusing to accept a salary).[300] The term ishtigal in the following example is couched between two transitive technical terms: taṣaddara li 't-tadrīs wa 'li 'shtighāl wa 'l-ifāda (he took up the post of mutasaddir to teach law, to direct the work of students, and to impart useful knowledge).[301]

The texts could also be explicit; a difference was made between one's own *work* (ishtighal) and one's *working of others* (ishghal). A professor was cited as having been so taken up with his own work, and his working of others, that he had no time left for writing of any kind: kāna min kathrati ishghālihī wa 'shtighālihī lā yatafarraghu li 't-taṣnīfi wa 'l-kitāba.[302] Another scholar related that in his youth he used to forego his dinner until well into the night, because of *working on his studies* (li 'li 'shtighāli bi 'l-'ilm).[303]

Ishtighal denoted a student's concentration in a field of knowledge, or in more than one.[304] A scholar could *work* a number of students in a variety of fields: kāna 'n-nāsu yashtaghilūna 'alaihī bi-'iddati funūn (students used to *work* under his direction in various fields).[305] The term denoted serious concentration in the field concerned. Two scholars were passing the time playing chess when one of them called the other a 'layman' ('ammi), that is, uneducated in the religious sciences; the other, who had started his education late, flew into a rage, but, from that time on, applied himself more seriously to his studies: fa-ḥamiya min dhālik, wa 'shtaghala min thamma.[306] Ibn Hajib said of a scholar that had he really *worked*, no one would have been able to outdistance him, but that he was negligent, a shirker: laui 'shtaghala ḥaqqa 'li 'shtighāl, mā sabaqahū aḥad; wa-lākinnahū tārik.[307]

Ishtighal was distinct from dars, the lecture course. This distinction was made clear in the fatwas of the jurisconsults. Haitami, for instance, spoke of the students of law who forsook ishtighal some days; likewise those who neglected the durus, lectures on law: ka-ikhlāli 'l-mutafaqqihati bi 'li 'shtighāli fī ba'ḍi 'l-aiyām; . . . wa-kadhālika tarki 'd-durūsi fī ba'ḍi 'l-aiyām.[308] Ibn Taimiya also made this distinction in one of his fatwas: idhā kāna 's-sākinu mushtaghilan, sawā'an kāna yaḥḍuru 'd-darsa am lā (when the resident student is *working*, whether or not he attends the lecture in law).[309] The senior Subki (d.756/1355) also makes this distinction in a fatwa: wa-lā yakfī ḥuḍūru 'd-darsi min ghairi 'shtighāl (it is not enough[310] to attend the law lecture without *working*).[311] Speaking of Jamal ad-Din Ahmad b. 'Ali al-Babasri (d.750/1349), from the Baghdad quarter of Bab al-Basra, Ibn Rajab reported having attended, on more than one occasion, sessions of his law lectures and of his *working* the students: ḥaḍartu durūsahū wa-ishghālahū ghaira marra.[312] The meaning here is clearly equivalent to what the French refer to as 'travaux pratiques', seminars where students are guided in practical work, 'workshops'.

The working of students was distinguished from the function of the professor of law (tadris), and from the writing of books (tasnif).[313]

Long years were ordinarily spent on ishtighal by the student, and this activity, if successful, was one that led to qualification for a teaching post. Ibn Taimiya's grandfather, Majd ad-Din b. Taimiya, took up residence in Baghdad for six years *working* on law (fiqh), conflicting legal opinions (khilaf) and al-'Arabiya, as well as other fields; after which time he returned to Harran and continued to *work* under the direction of his paternal uncle.[314]

Ishtighal also represented a certain standing or aptitude which the student had, and which qualified him for *working*. Subki wrote in a fatwa: 'if he is an adult, qualified for *working*' (lahū ahlīyatu 'li 'shtighāl), 'he is made to do so' (ulzima 'li 'shtighāl).[315] Elsewhere, the same author referred to this aptitude or qualification (ahliya) when making a distinction between the standing of the working-students (al-mushtaghilun) and the *auditing*-students (al-mustami-'un), a distinction which was reflected in the stipend they received from the endowment income. The terms of the waqf deed of the Dar al-Hadith al-Ashrafiya, in this regard, were reported by Subki as follows (in substance): Each of the *working* students was to receive eight dirhems, and those who increased their *work* were to receive an increase in stipend, and those who diminished their *work* were to have their stipend diminished accordingly. On the other hand, each of the *auditing* students was to receive three or four dirhems; those who did more (i.e. went beyond mere auditing) were to receive an increase. Those who showed promise were to be promoted to the category receiving eight dirhems. Those (among the *working* students) who committed to memory a book on hadith were to receive a prize from the professor of hadith. Those who gave all their time to *working* on the science of hadith and had an aptitude for it such that it inspired hope in their becoming experts in it would be assigned by the professor of hadith to the level of their peers, as the prevailing custom dictated.[316]

Elsewhere the same author, in one of his legal opinions, explained the madrasa's waqf terms, al-mushtaghilūn bihā (the *working* students in the institution), as meaning any *work* at all in the religious sciences (yaqtaḍī aiya 'shtighālin kāna bi 'l-'ilm), whether the student be a faqih (a graduate student of law, a fellow), or a mutafaqqih (an undergraduate student of law, a scholar).[317] The deed did not stipulate the particular amount of time for *working*, or the field of knowledge the student was supposed to work on, or whether residence in the college was essential. In fact, if he were to work for one single moment in the college, even during the law lecture, the requirements would be truly met in this science. On the other hand, the requirements would not be met by attending the law lesson (dars) without also *working*, even if the student were a graduate student (fellow);

because *working* in the college was a *qualification* which could not be escaped, and had to be performed at times when the work could truly be so considered.[318]

From the above texts, it is clear that ishtighal could be done at the undergraduate as well as the graduate level. Other texts show that it was done at the post-graduate level, even after the graduate jurisconsult had acceded to a teaching post. A holder of such a post who had lost it repaired to his home and, as was his custom, applied himself to *working* independently, as well as *working others*, until he was re-instated after 'one year and two-thirds'.[319]

Ishtighal was a lifetime activity for the scholar because he needed to learn constantly, to refresh his memory, to store up new knowledge and to keep it all active. Nu'aimi, in speaking of a jurisconsult, wrote that he excelled in the field of conflicting opinions (khilaf), then turned to *working* on Shafi'i law, working on it 'night and day', doing 'much studying and working' (wa-yuṭāli'u kathīran wa-yashtaghil).[320] A distinction is drawn here between the two activities, *working* being other than mere reading: reading in order 'to store up in the memory' what one reads. As already mentioned, *working* was distinguished from attending a lecture, 'hearing' it, since the *auditing* students were distinguished from the *working* ones.[321] Working was that activity during which the student made his own those materials he had learned in a lecture or by reading, an activity highly prized in an education culture where disputation was a necessity, and for which the quick retrieval of knowledge was the sine qua non.

The mufid, the mu'id, and the mutaṣaddir who *worked* the students, were supposed to go on eventually to a higher post, such as a professorship in one of the fields of knowledge. This is evident in statements declaring that such-and-such a scholar *worked* for a long time. But it happened that scholars who *worked* students were surpassed by these same students whom they had prepared for an eventual post. The career of Majd ad-Din Isma'il b. Muhammad (d.729/1329), nicknamed *Shaikh al-Madhhab*, an honorary title meaning 'Master of the (Hanbali) Madhab', illustrates some points in this regard. He was reported by Ibn Rajab as having excelled in the study of the law, and devoted himself to *working* students and issuing legal opinions, thus *benefiting* a great number of students and others. A pious man, he worked assiduously at these activities, answering the questions of students, transmitting sound and precise knowledge. Most of the jurisconsults who had proved themselves intelligent had studied under his direction, a group of them rising to professorships of law in the colleges, while he was the repetitor (mu'id) under them, constantly in attendance, showing them respect and addressing them as 'professor'.[322]

Thus the mu'id was also one who *worked* the students. For the

activity of the repetitor was not necessarily limited to repeating the lesson of the professor of law; he also *worked* the students, explaining further the texts studied, benefiting them with his learned remarks and observations. In a fatwa, Subki said that the administrator of the waqf should give preference to the repetitor in accordance with his merits, 'and by the fact that he *works* the students and benefits them' (bi-kaunihī yushghilu 'ṭ-ṭalaba, wa-yanfa'uhum).[323]

The function of ishtighal was often associated with the issuing of legal opinions. A mutasaddir was known to have worked as such in the Umaiyad Mosque for fifteen years and to have issued legal opinions for a fee.[324] The phrase, taṣaddara li 'li 'shtighāl wa 'l-fatwā (he assumed the post of tasdir for the working of students and the issuing of legal opinions), is used often in the sources.[325] The term ishtighal is often coupled with al-fatwa or al-ifta', in the sources, both functions, working the students and issuing legal opinions, being those of a mutasaddir.[326]

It would appear then that the mutasaddir was someone who aspired to the post of mudarris, though it may never have come his way, and he may have spent the rest of his days as mutasaddir. He could keep such a post even after becoming a mudarris.[327] As such he did what could be called *tutoring*, or individualized *direction of studies* at a high level. He did not need to know the law by heart, but had to be capable of elucidating it from the texts. The tasdir and repetitorship ranked below the professorship of law, and the deputy-professorship.[328] Tasdir could also lead to a qadiship.[329]

On the other hand, ishtighal was an activity which was peculiar to the scholar who aspired to the level of ifta', and thence to a professorship of law. A law student, on coming to Baghdad, was given a scholarship (as mutafaqqih) in a madrasa where he learned by heart the *Hidāya* on law by Kalwadhani. He was then given a fellowship (as faqih) in the Madrasa Mustansiriya, where he persevered in *working* until at the age of twenty-four he was licensed to issue legal opinions (wa-lāzama 'li 'shtighāli ḥattā udhina lahū fī 'l-fatwa).[330]

2. Posts Pertaining to other Fields

a. Shaikh al-hadith, Professor of Hadith

The professor of hadith was also called Shaikh ar-riwaya,[331] and the post was known as mashyakhat al-hadith.[332] His function, according to Subki, was to teach hadith, listen to the students reciting by heart, word for word. He had to be patient with them, for they were God's delegation. Furthermore, whenever a fascicle or full-length work of hadith appeared of which a hadith-expert was the sole authorized reporter, it was the professor's individual obligation (fard 'ain) to learn it by heart, obtaining a certificate of audition authorizing him to transmit it in turn.[333]

To this end, the waqf instrument of the Ashrafiya Hadith College

of Damascus provided visiting professorships to hadith-experts, who were duly authorized to transmit highly authenticated hadiths. These were hadiths whose chains of transmission (isnad) were of the highest level of authenticity, because their transmitters were highly trustworthy, their relationship to each other was established as authentic, and followed in uninterrupted succession. Such hadiths were called al-'awali. The visiting professor was to be compensated according to one of the three categories: (1) the out-of-towner with no place of residence in Damascus (idhā warada min ghairi 'sh-Shām); (2) the out-of-towner who already had a place of residence (muqīmun bi'sh-Shām); and (3) the established resident of the town (mina 'l-mustauṭinīn bi-Dimashq). The visiting professor of the first category was to be lodged in the college, paid two dirhems daily, and thirty dinars, valued at nine dirhems each, upon completion of his course. The visiting professor of the second category was to be paid a lesser amount, according to the discretion of the titular professor. And, finally, the mutawalli was to pay a sum of ten dinars or less to the visiting professor of the third category for teaching the 'awali-traditions of his repertoire.[334]

This transmission of hadiths by authoritative licence led inevitably to certain practices whose object was monetary gain. For the sources often bring out the fact that great sums of money were expended on the study of hadith. A devotee of hadith would travel far and wide to obtain from the sole authorized transmitter one or more such hadiths. It was therefore to the advantage of a muhaddith to be the sole authorized transmitter of a collection of hadith; and in order to qualify as such, an expert would sometimes refrain from transmitting his collection of hadiths until all other authorized transmitters had died. As the sole survivor, his collection of traditions could fetch a great fortune.[335]

In the interest of making the product rare, and therefore much in demand, 'Abd Allah b. Ahmad ad-Damaghani (d.516/1122) was said to have borrowed the hadith notebooks or fascicles (ajza') of the great muhaddithun and not returned them to their owners.[336] Some muhaddithun, in their desire to hold on to their collections for a better market, would hide from those who sought to learn them; for once asked to teach them, they could not refuse, according to a well-known prophetic tradition.[337]

In 569/1174, Damascus saw the first college of hadith founded by Nur ad-Din Zanki. This event raised the level of the muhaddith to that of the jurisconsult in the college system. Formerly the college (madrasa) had been primarily for the teaching of law, and the professor of law was the occupant of the college's chair. Specialists in hadith, in the Koran, in grammar, had subordinate positions, their subjects being ancillary to law. With the dar al-hadith, hadith was

raised institutionally to the level of law.[338]

Previous to the founding of institutions wherein hadith was the main subject, this field of knowledge was taught as an ancillary subject in the madrasa, or in a masjid devoted principally to law. On the other hand, there were masjids whose principal subject was hadith; for unlike the madrasa, in the masjid any of several subjects could be designated as the principal one. Thus there were masjids for grammar, for hadith, for the Koran, for law, etc.[339]

Some professors of hadith had achieved considerable renown; as, for instance, al-Baihaqi (d.458/1066) whose reputation was so great that he received a call from Nishapur to teach the subject, and accepted it.[340] Abu Bakr al-Khaiyat (d.468/1076), the greatest Koranic scholar of his time in Baghdad as well as a muhaddith, taught both subjects at his home, as well as in his mosque (masjid) and in the Mosque of al-Mansur.[341]

These scholars of the Koran and hadith were likely to be ascetics in the true sense of the term, renouncing worldly goods in order to devote themselves to the study of the sacred scripture. They spent most of their time in study and teaching, preferably in their homes and in the mosques, refusing the patronage of the powerful, which might have led them to relinquish their principles. Such a person was al-Hasan b. Ahmad al-ʿAttar (d.569/1174). He was said to have always been in debt for at least one thousand dinars; and this, in spite of the money he gained from plying his trade as a perfumer-druggist (ʿattar), and other funds received from various parts of the realm, all of which he distributed among his students. He was said by one of his students never to have accepted gifts from oppressing tyrants whose wealth was misappropriated, nor accepted from them a madrasa or a ribat, but to have confined himself instead to teaching in his home, while his students took up residence in his masjid. This is an indication that they were considered destitute and could therefore reside in the mosque precincts. He devoted half of his teaching day to hadith, and the other half to the Koran and the religious sciences.[342]

In Damascus, the Umaiyad Mosque had study-circles devoted to the study of hadith (halaq al-hadith), called miʿad (pl. mawaʿid), to be discussed presently. Hadith was also taught in the monasteries (ribat, khanqah, zawiya). Because of its prestige as a religious science and its all-encompassing subject matter, it could easily be used as a Trojan horse to smuggle into the institutions of learning unauthorized subjects such as philosophy, or philosophical theology.[343]

In his work *Talbīs Iblīs*, Ibn al-Jauzi took to task the traditionist who spent as much as fifty years on writing, memorizing and collecting hadiths without understanding their contents. And when a problem arose concerning a simple daily matter such as his ritual prayers, he had to resort to consulting one of the students of law who came to

learn hadiths from him. That was why their critics said of them that they were 'beasts of burden carrying books, ignorant of the contents of their burden'. Ibn al-Jauzi cited two examples of hadith misunderstood by the muhaddithun. The first was a case of taking the words of the Prophet literally: 'The Prophet enjoined men from watering the crops of others', a hadith that really meant: 'The Muslim is enjoined from sexual relations with pregnant captured women'. The second example of misunderstanding revolved around the word halaq, study-circles, misread as halq, shaving; so that instead of the hadith enjoining the holding of such circles on Friday before the congregational prayer, the ignorant muhaddith had read it as enjoining shaving before the performance of the prayer.[344]

1) Hadith and the Mi'ad

In Damascus and Cairo, the term mi'ad referred to a halqa for hadith, whether in a jami'[345] or in a masjid.[346] Nu'aimi cited Abu 'Abd Allah b. al-Kamal al-Maqdisi (d.688/1289) as the professor of hadith in his uncle's madrasa (where he was also professor of law), as well as in the Ashrafiya Hadith College, and that he had several mi'ads in which 'he taught students hadith, benefiting them (with his remarks and observations), and corrected their mistakes'.[347] The biographer went on to say that 'a group of muhaddithun benefited from him'.[348] Thus the function of the mi'ad-professor was distinct from the professorship of hadith,[349] recalling that of the mutasaddir, discussed previously. Like the tasdir, it was a paid post.[350] It could be for the purpose of preaching academic sermons (wa'z), for which hadith was often the vehicle.[351]

2) Meaning of Mi'ad

The meaning of the term mi'ad, in ordinary language, is a promised, appointed time or place,[352] a rendez-vous.[353] Dozy gives its technical meaning as 'une leçon religieuse, une lecture de dévotion' (a religious lesson, a lecture on piety).[354] The mi'ad was related to the field of hadith, second of the two sacred scriptures of Islam and a vehicle of pious literature. The connection between hadith and wa'z, the academic sermon, was a close one. There is no doubt, however, that the mi'ad was directly connected with hadith and was conducted by a hadith professor.[355]

b. Assistants to the Professor of Hadith

1) Mustamli, Repeater of the Professor's Dictation

Hadith was generally taught by dictation. The numbers attending hadith dictation classes often ran into the hundreds or thousands. In such cases, the professor had to have a number of mustamlis to repeat the dictation, relaying it to the rows of persons located out of earshot of the professor.

The post and function of the mustamli has already been treated extensively.[356] The term mustamli is an active participle meaning,

literally, one who asks another to take dictation. This post must not be confused with that of the muʿid.[357] The mustamli was the assistant to the professor of hadith; the muʿid, of law. The former repeated the dictation of the professor, word for word, line by line, working at the same time as the professor; the latter drilled the law students *after* the professor's lecture on law, repeating and elucidating what the professor had said. The mustamli could also work as mufid in hadith.

2) Mufid, Docent of Hadith

The term mufid applied to a knowledgeable scholar of hadith as well as to one of law. When Subki treated of this post he did so in relation to law.[358] There is no doubt, however, that the term was used also in relation to hadith. For instance, when Muhammad al-ʿUkbari (d.496/1103) was referred to as 'Baghdad's Mufid', or when al-Mubarak al-Khaffaf was referred to as 'Iraq's Mufid', the references were to their value as hadith scholars. Al-ʿUkbari worked also as a mustamli for many professors of hadith in Baghdad, and was known for his loud and clear voice when he recited traditions from his own repertoire, and when he relayed the dictation of the professors.[359]

Just as the muʿid in law was able to go from the mere drilling of the students in the lesson delivered by the professor of law to furnishing the students with his own notes, remarks and observations, and in so doing perform the function of the mufid in law, so also could the mustamli do more than merely relay the professor's dictation of hadith, he could add his own notes and observations, and in so doing perform the function of mufid in hadith.

c. Nahwi, Grammarian, Professor of the Literary Arts

The title an-nahwi, the grammarian, was used to designate the professor who taught not only grammar, but also literature, belles-lettres. Strictly speaking, the term nahw referred to syntax, and sarf to morphology; but the former term was also used to designate grammar generally. The specialist in morphology was designated by the term sarfi. The professor was also called Shaikh an-nahw, and the post, mashyakhat an-nahw.

Grammar was always an important part of education. It was learned especially in order the better to understand scripture. This was also the ultimate purpose of learning adab-literature, especially poetry, taught also by the incumbent to the post of grammarian. Poetry, especially pre-Islamic poetry, was quoted as philological evidence (shahida, pl. shawahid) for the better understanding of scripture. Language and literature were also studied for themselves. The practice was frowned upon by the ulama, mainly because it carried these subjects beyond the object of being ancillaries to the religious sciences, placing them squarely in the category of the profane. An example illustrating this attitude is found in a remark regarding the grammarian, Abu 'l-Hasan as-Salami an-Nahwi

(d.c.500 / 1107), in which the biographer characterizes him as 'trustworthy and religious, and rare it is that a grammarian is religious!'[360] It is also a fact that a great number of grammarians adhered to rationalist Muʿtazilism, or to scepticism.

d. Shaikh al-Qira'a, Professor of Koranic Science

The professor of Koranic science was referred to as Shaikh al-qira'a, and his post, as mashyakhat al-qira'a. The expert in this field was called al-muqri'. With the advent of the dar al-qur'an, and even before, with the dar al-hadith, the post of the muqri' was raised to a rank commensurate with that of the professor of law and the professor of hadith.[361]

e. Other Occupations Pertaining to the Koran

Subki cited three of these in his *Muʿīd an-niʿam*. The first-mentioned is the Koranic reciter (Qari' al-ʿashr), whose function it was to recite a tenth-part of the Koran before the law course and following the recitation of the Koranic rubʿa; that is, if the class was in the habit of doing this, which was the custom of the majority of institutions. The reciter was also to recite a verse of the Koran appropriate for the occasion.[362]

Next mentioned is the rhapsodist (munshid). His main function was to recite poetry and sing the praises of the Prophet. If he contented himself with reciting love poetry and hamasa-poetry, then he would be doing wrong; especially if he did so in gatherings for the purpose of studying the religious sciences.

The third-mentioned are the Koranic psalmodists (al-qurrā' bi 'l-alḥān) whose function it was to render the words of God as they were revealed, unpretentiously, clearly enunciated. The books regarding the function of the Koranic scholars deal amply with this subject.[363]

Subki goes on to mention the pitfalls to be avoided. He cited Ibn as-Salah as saying that if the custom of the town was that no class was to be held on Friday for teaching the recitation of the Koran, this custom had to be respected. Subki believed, however, that this would be so if the custom did not exist in the time of the founder; but if it turned out upon investigation that the custom was already in existence at the time of the founder's drafting of the deed, then the matter was debatable. Koranic psalmodists and rhapsodists arriving late at the residences of princes who were holding court, risked being completely ignored. A Koranic reciter might recite a tenth-part of the Koran, or a piece in praise of the Prophet before one of the princes, or before an assembly of dumb persons who did not understand what was being said, while the prince was taken up with his work. Subki once saw a rhapsodist at the tent of a prince, in the midst of a teeming crowd, reciting the Koran and singing the praises of the Prophet, with no one paying him the slightest attention, and no one there to under-

stand what he was saying. It was an upsetting experience. Koranic reciters and rhapsodists were not to use their beautiful voices for prohibited singing, in drinking parties, and other objectionable deeds; they were to show their gratitude for such voices by avoiding such actions, and thus avoid the aversion of their Lord and His anger.[364]

f. Shaikh ar-Ribat, The Monastery Abbot

The monastery abbot was referred to as shaikh ar-ribat, shaikh al-khanqah, or shaikh az-zawiya, the differences between ribat, khanqah and zawiya not being distinctly drawn. Nuʿaimi quoted Damiri saying that khanqah was the Persian term for the 'residence of Sufis' (dar as-sufiya), and that no distinction was made between the three institutions.[365]

Subki says that the monastery abbot (shaikh al-khanqah) was sometimes called Chief Abbot (Shaikh ash-shuyukh), and sometimes Chief Abbot of the Sufi Gnostics (Shaikh shuyukh al-ʿarifin), terms which were criticized by Subki's father who said, 'He is not content with claiming gnosis (maʿrifa); he must also claim being its Chief Master!'[366]

The duties of the monastery abbot as related by Subki included the training of the Sufi novice (murid); protecting him from harm; caring for the soul, not the bodies, of his charges (jamāʿat-hū); addressing them in accordance with their attainments; abstaining from using esoteric language before the novice was adequately prepared for it, for such language could otherwise be of great harm to him. Rather he was to proceed with the novice gradually, teaching him the ritual prayers (salah), the modulated recitation of the Koran (tilawa), and the Sufi dhikr-prayer in praise of God. Most of all, he was to avoid those statements made by some of the great Sufis which were not meant literally; they were not to be repeated to a novice before he was ready for them, at the risk of causing him to lose his soul.[367]

Subki designated the abbot of an outlying monastery as Shaikh az-zawiya, thus distinguishing between the khanqah (in a town) and zawiya, saying that most of the zawiya-monasteries were out in the wilderness. The function of the abbot in charge of such a monastery was to see to the preparation of food for arriving guests (warid) and those passing through (mujtaz). He was to receive them in a friendly manner, putting them at their ease so as to make them feel at home. To this end, the Shaikh might even designate a separate place for the timid guest so that he could eat his meal and rest without feeling embarrassed.[368]

It is clear from these two passages in Subki's *Muʿid an-niʿam*, as well as from other sources, that there were monasteries both in the urban centres and in sparsely populated regions, the latter type of monastery being especially for the entertainment of guests who were wayfarers, travelling scholars and pilgrims to the Holy Places.

g. The Preachers

In medieval Islam there were preachers of various kinds: (1) the khatib, preacher of the Friday sermon (khutba) in the Friday Mosque (jami'); (2) the wa'iz, preacher of the academic sermon (wa'z) in a halqa or majlis; (3) the qass, and (4) the qari' al-kursi, both popular preachers. Thus, in Islam, preaching was a highly developed art, practised by more than one type of preacher, each having his own function.

Subki said that the khatib-preacher had the obligation of speaking loud enough for at least forty worshippers to be able to hear him in the Friday Service. If he were to preach in a voice so low that no one besides himself would be able to hear him, his sermon would be inadmissible. Were he to raise his voice so that it would reach them but they were, all of them, or some of them, hard of hearing, this too most likely would make his sermon inadmissible. He was to avoid (a) turning around and being distracted during his sermon; (b) knocking on the steps of the pulpit as he mounted it; (c) invoking God for the holders of power at the end of his ascent before seating himself and exceeding the proper bounds in recounting the excellence of their qualities; (d) facile and excessive haste in the second sermon (presumably the part that came after praising the holders of power); all of this was to be avoided as reprehensible. On the other hand, there was nothing wrong with his invoking God for the well-being of the sovereign, since this would also mean the well-being of the Muslims generally. But the preacher should not prolong his sermon, for he must consider the old, the weak person, the child and the needy (who presumably must have their chance of asking for financial help from the well-off in the congregation). Nor was the preacher to use far-fetched expressions the understanding of which would be difficult except for the initiated; rather he was to resort to words clearly understandable. Nor was he to use pretentious rhymed prose, but avoid, among other things, matters that had been amply treated by the jurisconsults.[369]

The wa'iz-preacher's obligations were of a similar order. He was to remind the people of those days of religious obligation which belong to God. He was to put the fear of God in people. He was to tell them the lives of the saints and how they conducted themselves. What was most important of all for him, as well as for the khatib-preacher, was that he repeat to himself God's statement in the Koran: 'Would you order the people to do good, while you forget to do so yourselves?' And he was to remember the poet's saying: 'Do not prohibit people from doing evil and then do it yourselves; a great shame will fall upon you if you do'. He was to know that words which did not come from the heart would not reach the hearts of people. And finally, khatib- and wa'iz-preachers who did not exhibit signs of virtuous living, were seldom chosen by God to do His work.[370] In contradistinction to the

khutba of the khatib, the waʿz of the waʿiz was not so restricted as to place or time, and was usually done in a halqa or majlis.

The qass-preacher preached in the streets, reciting Koranic verses and hadiths relating to the Prophet, and he narrated the lives of the pious ancestors (salaf). He was to speak plainly and clearly so that he could be understood by the common people. He was to exhort them to prayer, fasting, paying the tithe, giving alms, and the like; but he was to avoid all discussion of theological questions, various kinds of creeds, and the divine attributes, all of which would ordinarily lead them to things better avoided.[371]

Subki's advice was based on actual historical events with which he was thoroughly familiar. Notice especially his reference to theological matters. On many occasions these popular preachers were prohibited from preaching in the streets because they did not restrict themselves to the usual sermon-making, Koran, hadiths, lives of saints, but delved into propagandizing in favour of certain theological movements.

The qari' al-kursi-preacher and the previous one had this in common – that they both narrated the lives of the saints and recited Koranic verses and the traditions relating to the Prophet. They differed in that the qass-preacher recited these things from memory (yaqra' min ṣadrihī wa-hifẓih) and did so in the streets, seated or standing; whereas the qari' al-kursi was always seated (whence his designation), and did his preaching in a jamiʿ or a masjid or a madrasa or a khanqah; and he recited always from a book, not from memory (lā yaqra' illā min kutub). The rules applying to him were the same as those applying to the qass-preacher; as, for instance, reciting what would be understood by the common people, and the consequences of which would not be harmful. The sort of books that could be recited for them were Ghazzali's *Iḥyā' ʿulūm ad-dīn*, Nawawi's *Riyāḍ aṣ-ṣāliḥīn*, and his *Adhkār*, Ibn al-Imam's (d.601/1205) *Silāḥ al-mu'min fī 'l-adʿiya*, Taqi ad-Din as-Subki's *Shifā'as-saqām fī ziyārat khair al-anām*, and Ibn al-Jauzi's various books of sermons. These authors warned against delving into matters theological, and such like.[372]

h. Imam, Leader of the Five Daily Prayers

Any Muslim may act as an imam leading the ritual prayer (salah).[373] But the imam who had a post as such in a mosque, according to Subki, was to give good advice and be a good example to the faithful whom he led in the ritual prayers. He was to do so by being faithful and sincere in his prayer, fervent in his invocation, humble in his supplication. He was to perform well his ritual ablutions and his recitation of the prayer. He was to go to the mosque early so that he could begin the prayer without delay once the congregation had assembled; otherwise, he was to wait until all were present, unless the waiting

became excessively long. In short, he was to perform the prayer in the best way he could, given the circumstances.

Subki goes on to say that the general misfortune of his time was that the imam of a mosque, without justification, hired a substitute to take his place. Some jurisconsults, including an-Nawawi (d.676/1277) were of the opinion that such an imam was not entitled to a salary unless he himself performed the function of imam; nor was his substitute (na'ib) entitled to a salary, because he was not lawfully hired.[374]

As far as Subki was concerned, it was unlawful for one man to combine two imamships, the reason being that he was held responsible for beginning the prayer at its appointed time in each of the two mosques. To give precedence to one mosque over the other would constitute an arbitrary act in the absence of an emergency. This would be tantamount to his assuming two professorships (tadrīsān), the stipulated times for which were such that attending to the duties of one would lead necessarily to neglecting the other, which would also be unlawful.

i. Mu'allim, Mu'addib, Faqih: Elementary School Teacher

There were several terms designating teachers of students at the elementary level, of which the term mu'allim was the most common. The terms mu'addib[375] and faqih[376] were also used, though they had other meanings. Mu'addib applied to tutors of sons of well-to-do families; it also designated the director of conscience of Sufi novices. Faqih (which became fiqi in Egyptian popular usage), besides signifying the elementary school teacher, designated, as previously mentioned, the accomplished jurisconsult as well as the 'graduate' student of a college of law, above the level of mutafaqqih.

Subki had much to say about 'the teacher of the elementary school' (mu'allim al-kuttab).[377] He was to have an orthodox creed; many boys grew up to have vitiated beliefs because these were held by their teacher (faqih). Subki advised fathers to inquire into the principal beliefs of the teacher before inquiring into their practical applications, which should come afterwards. The teacher's first duty was to teach the Koran, then the hadith. He was to avoid discussing credal beliefs until the boys were sufficiently prepared for them, at which time he was to introduce the creed of Ahl as-Sunna wa'l-jama'a (The Adherents of the Sunna and the Community's Consensus). Yet it would be more prudent if he were to hold back on this. He could allow the boy who reached the age of reason to copy the Koran on a slate and carry it.[378]

Subki's advice to fathers regarding the choice of teacher for their sons was of basic importance to Islamic education. The teacher could be a perfect Muslim as far as his outward practice of religious duties were concerned, but he could fall short of being a mu'min; that is, a

Muslim who not only practised his religion outwardly, but inwardly *believed* it. The heretic would cause great harm to the child's religious education.

3. Other Occupations

a. 'Arif, Monitor

The copies that have come down to us of Subki's *Mu'īd an-ni'am* cite the term for this position, 'arif, without further clarification; all copies, that is, except the Yale manuscript, no. 660, which has a marginal note (for which we have the editor Myhrman to thank). The note states that the 'arif, monitor, is the naqib over the students and his duties are those of the naqib.[379] A. S. Tritton has mentioned the naqib as first appearing in the seventh / thirteenth century, referring to him as the deputy who 'had to keep order in the class, seat visitors according to their rank, wake the sleepers, warn students against sins of commission and omission, bid them attend to what was said and (it was his duty also) to keep the register'.[380] This description would be in keeping with the cryptic marginal note cited above. But rather than call him a deputy of the teacher, his assistant, it would seem that the naqib or 'arif was a student whose function it was to keep the other students in line, a monitor. This would be borne out by the words wa-huwa 'l-kabīru 'alaihim, meaning that the 'arif was the one chosen from among them to have the power of supervision over them. He therefore ranked as a student, and his duty was to help the professor.[381] Presumably, his stipend from the endowment of the institution was over and above that due him as a student.

b. Naqib, Marshall of the Nobility

In Baghdad, the post of naqib had a long history.[382] Its holder had the duty of keeping a register of the descendants of the Prophet's family, and of verifying their genealogy, so that they could be included among those receiving a pension.

c. Katib al-ghaiba, Keeper of Class Attendance

Subki cited two such posts, one for the students of law (kātib al-ghaiba 'alā 'l-fuqahā'),[383] and one for the students of hadith (kātib ghaibat as-sāmi'īn).[384] Regarding the former, Subki said that he had to report those students who were absent from class. He was to be truthful and was not to report a student as absent unless the student failed to have a valid excuse. The duties of the keeper of the attendance of hadith students consisted in making a check of those absent, as well as those who, though present in class, failed to take down the dictation of the professor. These two posts were considered necessary, because the absentee without a valid cause could not legitimately be given his share of the foundation's waqf income.

There was a keeper of attendance (katib al-ghaiba) for the large number of mutasaddirs at the Umaiyad Mosque in Damascus,[385] many of whom were dismissed, most likely for remaining in their

homes and failing to attend to their duties in the Mosque.[386]

d. Nasikh, Warraq – Copyist, Copyist-Bookseller

The copyist of manuscripts was referred to by the terms nasikh and warraq. It is interesting to note the difference in the morphology of the two terms, the first being an active participle and the second an *intensive* active participle. The first term derives from the verb *nasakha*, to copy. Although nassakh, an intensive active participle, is noted in the dictionaries, it was not generally used in the medieval biographical sources. On the other hand, warraq, deriving ultimately from waraqa, a sheet of paper, a folio, is perhaps intensive because it denoted a professional man whose business it was to deal with manuscript books. It was used to denote a bookseller as well as a copyist.[387] It is very likely that when a biographer referred to a person as warraq, meaning copyist rather than bookseller, he was referring to a professional copyist, one committed to the craft by choice, or by necessity, while pursuing some other field of endeavour. From this term we have the verb warraqa and its infinitive noun tauriq, to copy manuscript books.[388]

For instance, Ibn an-Nadim, author of the famous and very useful *Fihrist*, was a warraq who was a bookseller, and he probably hired other copyists to copy manuscripts for him while also copying them himself for his own collection and for sale. He had an extensive knowledge of books in the various fields, and was, according to Yaqut, a Mu'tazili Shi'ite.[389]

On the other hand, the Hanbali jurisconsult, Ibn Hamid (d.403/1013), celebrated in his day as an excellent teacher,[390] was referred to as 'the Hanbali warraq', here meaning, copyist; for later the biographer explains that he used to copy manuscripts for a fee and live on what he was paid.[391] In his day, the richly endowed madrasa had not yet flourished, and the Hanbali madhab did not have such colleges until the following century.[392] The Mu'tazili grammarian Sirafi, was a copyist who made his living copying (yansakh) ten folios for ten dirhems daily.[393]

Scholars acquired books for their own libraries by buying some and copying others, as was the case with 'Umar b. Muhammad al-Bistami (d.562/1167): wa-yuḥaṣṣilu 'l-uṣūli wa'n-nusakhi shirā'an wa-naskhan (he collected originals and copies through purchase as well as by copying them).[394]

It would seem that the warraq was engaged in the production of the entire book as a profession. 'Allah al-Warraq ash-Shu'ubi was a copyist in Bait al-Hikma under Harun ar-Rashid, al-Ma'mun and the Barmakids.[395] Ibn Akhi 'sh-Shafi'i was a copyist working full time for Jahshiyari (d.331/942).[396] Abu 'l-Futuh 'Ubaid Allah al-Mustamli was a copyist who copied books for others in a masjid, working the whole day long, towards the end of his life.[397] Muham-

mad b. Ya'qub al-Asamm (d.346/957) was a copyist-bookseller who had a warraq working under him for the production of copies.[398]

It would seem that there was a difference between the bookseller called kutubi and the one called warraq. The first may have been concerned with selling copies of books already in existence, according to the strict meaning of the word (kutub, books); whereas the warraq as bookseller was engaged not only in selling such copies, but also in producing new ones for sale. One may wonder whether they commissioned authors to write new works; such commissions were costly, and known to have been paid for by caliphs and other men of wealth. But all the above terms, when used loosely, were interchangeable.

e. The Corrector

The term for corrector is musahhih. The best credentials for this occupation was expertise in grammar and lexicography. Such was the case with 'Ali b. Muhammad al-Hilli (d.c.600/1204), who was solicitous in correcting books, careful not to change anything he did not understand, or of which he was not certain.[399]

Correctors were generally scholars in their own right, and because of their interest in the content of the works being corrected, may not have been the most efficient in their work. Ibn Mahrawaih and Abu 'Ali al-Farisi met twice a week to correct a work for the library of Kafi 'l-Kufat. 'After reading some of its folios', related Ibn Mahrawaih, 'we would go on to discussing various literary subjects.'[400]

f. The Collator

The term for collator was mu'arid, muqabil, and for the occupation, mu'arada, muqabala. It was a regular profession like the others mentioned, and its practice provided a living. The ascetic Abu 'Umar az-Zahid was said to have made his living for a long time by collating books with the help of others.[401]

The best correcting was done, of course, on the authority of the book's author. Baihaqi while studying with Ahmad al-Maidani (d.518/1124) in 516/1122, corrected with him several of the latter's works, including the onomasticon *as-Sāmī fī 'l-asāmi*.[402] The muhaddith Muhammad b. al-'Abbas (d.384/994) collated his own works with his concubine.[403]

g. Khadim, Servitor

The servitor served a professor, or a wealthy student, while pursuing his own studies. The first appointed professor of the Madrasa Nizamiya, Abu Ishaq ash-Shirazi, had a servant.[404] Such was also the case with another professor of the Nizamiya, As'ad al-Mihani.[405] Abu 'l-Khattab al-Kalwadhani had a servant who was also one of his students.[406] Ibn Taimiya's grandfather, Majd ad-Din b. Taimiya, who was brought up as an orphan, accompanied his more fortunate paternal cousin to Baghdad at the age of thirteen, to serve him and study along with him (li-yakhdimahū wa-yashtaghila ma'ah).[407] Ibn

al-Jauzi speaks of a law student who hired himself out as servitor to jurisconsults and wa'iz-preachers (kāna yatakhādamu li 'l-fuqahā'i wa 'l-wu''āẓ).[408]

h. Khadim al-Khanqah, Administrator of the Monastery

The term servitor was also one that designated a post with administrative responsibilities in a monastery: khadim al-khanqah, servitor of the monastery. According to Subki, the holder of this post was to see that food was not wasted, but given to the poor, or to a cat, but not to be thrown out. Among his responsibilities was the overseeing of the waqf property, exploiting it, doing what he could to increase its yield.[409] That this 'servitor' was in fact the administrator of the monastery was made clear in a passage in Nu'aimi's *Dāris*[410] where at-Timani is said to have been appointed to the post of 'servitor' in the Sumaisatiya Monastery in Damascus.

The term for the post of servitor, whether of the first- or second-mentioned type, was khidma.

Chapter 4

ISLAM AND THE CHRISTIAN WEST

I. INTRODUCTORY REMARKS

Readers familiar with the history of medieval universities and colleges can hardly fail to see some significant parallels between the system of education in Islam and that of the Christian West. These parallels can be seen in particular instances in the institutions, in the methods of instruction, in the posts, as well as in the more general phenomena, such as the prominence and pervasiveness of legal studies, the resulting decline and subordination of the literary arts, and the crowning achievement of the Middle Ages: the scholastic method in law and theology, with their quaestiones disputatae and reportationes.

In this chapter the experience of the Christian West will be compared with that of the Islamic East and West in the hope that a better understanding of both experiences may be gained in the process. The comparison will be confined to areas where the earlier Islamic experience is likely to shed light on later development, and where the Christian experience, more familiar because better documented and better studied, will help to bring into focus elements which, for lack of documentation or point of reference, have lain beyond the reach of restricted study.

II. INSTITUTIONS

1. The University as a Corporation

The university is a form of social organization produced in the Christian West in the second half of the twelfth century. As such, it was not the product of the Greco-Roman world. Nor did it originate from the cathedral or monastic schools which preceded it; it differed from them in its organization and in its studies. The works of H. Denifle[1] and H. Rashdall[2] have made this quite clear. Furthermore, the university, as a form of organization, owes nothing to Islam. Indeed, Islam could have nothing to do with the university as a corporation. Based on the concept of juristic personality, the corporation is an abstraction endowed with legal rights and responsibilities. Islamic law recognizes the physical person alone as endowed with legal personality.

The university is a twelfth-century product of the Christian West not only in its organization, but also in the privileges and protection

it received from Pope and King. The granting of privileges and protection was due to the peculiar situation of scholars away from home, finding themselves as 'aliens' in a city where only local residents were 'citizens'. This concept of citizenship was also foreign to Islamic law: all Muslim believers were equal before the law anywhere in the world of Islam.[3] Muslim students, scholars and professors travelled in the Muslim world far and wide, east and west, as 'citizens', without the need for protection or special privileges.

The university was a new product, completely separate from the Greek academies of Athens and Alexandria, and from the Christian cathedral and monastic schools; and it was utterly foreign to the Islamic experience.[4] Such was not the case, however, with the college.[5]

2. The College as a Charitable Trust

The rise of universities was occasioned by a great revival of learning between 1100 and 1200, during which time, 'there came an influx of new knowledge into Western Europe, partly through Italy and Sicily, but chiefly through the Arab scholars of Spain'.[6] This influx of new knowledge has been described by Western scholarship. It has been detailed in the list of books dealing mostly with philosophy and science that have been translated from Arabic into Latin, so that it is generally agreed that Arabic learning made its contribution to the 'great revival of learning'.

On the other hand, what little has been said of the contribution of the Arabs to the institutions of learning of the Christian West or to its teaching methods has been met with less enthusiasm. When Julian Ribera suggested the possibility that the medieval university owed much to conscious imitation from the Arabian system of education, in his collected *Disertaciones y opúsculos*, F.M. Powicke, one of Rashdall's learned editors, after describing Ribera's work, dismissed the claim curtly with, 'his argument is not convincing'.[7] Ribera's arguments may well not have been convincing; but they were not given the benefit of being cited in one of the usual 'Additional Note'-s at the end of a chapter, in an effort to tell the reader why the argument was not convincing.

If the university was foreign to the Islamic experience, the college as an eleemosynary, charitable foundation was quite definitely native to Islam. The Islamic college, whether of the masjid or madrasa variety, was based on the Islamic waqf, or charitable trust, the principles of which, in connection with the college, have already been treated.[8]

The home of the college in the Latin West was Paris. The first known college there was founded in 1180 by a certain '"dominus Jocius de Londoniis" just returned from a pilgrimage to Jerusalem'.[9] This foundation, a domus pauperum, came to be called somewhat

later the 'Collège des Dix-Huit', meaning eighteen poor students. 'Originally, the college was nothing more than an endowed hospicium.'[10] The term college, from the Latin term collegium, implies incorporation; the incorporated college does not come into being until more than half a century later. Until then, the colleges were simple eleemosynary institutions, based on what has come to be known as the charitable trust.

In Chapter One above, the Muslim waqf was described as a charitable trust brought into existence by the voluntary act of a Muslim individual acting as such, and without the mediation of the governing power. The Muslim founder acted individually and independently, immobilizing his private property for a public purpose, addressing it directly to its beneficiaries as defined by himself, without the mediation of the central authority or any other legal person.

a. Waqf and the 'Pia Causa' of Byzantium

As such, the waqf differs basically from the pia causa of Byzantium, and from the acts of charity in the Christian West, whereby donations were given to the Church for distribution among the poor. These donations were, properly speaking, donations sub modo, made to a previously existing legal person. The question may therefore be raised whether or not there existed in France and later in England, the two great homes of the medieval colleges, charitable trusts in the sense of waqfs whose founders act as individuals creating foundations that are neither corporations nor donations made to corporations.

b. Waqf and the 'Fondation' of France

Such foundations are known to have been created in France and in England. For France, Albert Geoffre de Lapradelle points out the dramatic change in the legal status of the 'fondation' coming after the Council of Trent of 1311.[11] This Council publicly censured the religious orders, culpable of usurpation of the patrimony of the poor and of neglecting adequately to maintain the foundations. Founders then began to found differently. The will of the Countess Mahaut of Arras dated 15 August 1318, reads as follows: 'Volo et ordino quod unum hospitale fiat' (I will and ordain that a hospital be established). The hospital was thus brought into existence by an act of sovereignty on the part of the founder herself.

This act of sovereignty can also be seen in the following deed:

> A voulu et voeult lidit Jehan fonder et estorer, fonde et estore ung hopital en une maison et tenement que il a. Voeult et ordonne lédit Jehan de Fierin que audict hopital ayt perpétuellement à tousiours sans aulcune défault sept lictz estoffez.

The following year, Jean Roche, a bourgeois of Limoges 'ordonne par son testament que sa maison sise devant l'église fut affecteé à un hospice où les pauvres seraient reçus et logés'.[12]

These two foundations were not addressed to a religious order, nor to a city; they were neither gifts nor bequests. Jean Roche *gave an order* that his house be made into a hospice where the poor may be admitted and lodged. Jehan of Fierin made it an act of his own will ('a voulu et voeult'). Many charitable works were due to powerful lords who founded by an act of sovereignty, and the rich bourgeois, who imitated them, wanted to speak their language.[13]

Since the work of de Lapradelle, other studies have shown that private individuals had earlier by their own acts, without the mediation of the central authority, created foundations and endowed them. Thus bridges were founded and endowed with lands in the eleventh and twelfth centuries.[14] In the twelfth century, laymen founded hospices, poor-houses and hospitals, exercising their charity directly for the benefit of the poor, without the mediation of the monasteries.[15]

De Lapradelle states that such foundations created by private individuals without the prior authorization of the sovereign continued to come into existence up to the edicts of the seventeenth and eighteenth centuries. After these edicts France reverted to its former indigenous concept of foundations as donations sub modo made to a legal person created by the sovereign. But the type of foundation that was the creation of a private individual without authorization from the sovereign, foreign to Roman law as it was to the Byzantine pia causa, was in fact the only kind of foundation known to Islam. It existed in Islam long before it appeared in the West, and continued to exist down to modern times, long after it disappeared from the West.

c. Waqf and the Charitable Trust of England

Foundations in England followed a different trend from that of the continent. The English charitable trust developed on the same pattern as the waqf, including perpetuity, even when other trusts were no longer allowed to be perpetual. The English trust kept its fundamental characteristic of being exclusive of juristic personality; but the principle was developed according to which a trust could be incorporated. In England, this development can be seen quite clearly in the first college foundations in Oxford.

The first three colleges of Oxford were University College, Balliol and Merton. University College was founded with a bequest made in 1249 by William of Durham. Rashdall explains that in spite of 'the want of any royal charter or formal incorporation, the college, *according to medieval practice*, experienced no difficulty in holding land and other property *in its own name*'.[16] In speaking of Balliol College, Rashdall says that its scholars were established in Oxford in 1266. 'They were at first supported by annual payments from the founder, who allowed a commons of eightpence a week to his pensioners. On this ground Balliol College may be said to possess a certain shadowy

claim to be the oldest of Oxford colleges. *But if the antiquity of a college is held to date from its existence as a legal corporation, it must yield to the claims of Merton . . . Balliol College was originally not a land-holding corporation like other Oxford colleges . . .*'.[17] In speaking of Merton College and comparing it with University and Balliol, Rashdall says that on the whole, 'Merton has the best claim to be the earliest Oxford college. Balliol existed before it, we may say, *de facto* but not *de iure*, and University *de iure* but not *de facto*. Merton alone existed both *de iure* and *de facto* in 1264'.[18]

Rashdall is willing to consider University and Balliol as Colleges, de facto in the one case, de iure in the other, but bestows upon Merton the name of college in the fullest sense possible, considering a college to be not only a charitable trust, but also a corporation. But in light of the history of such institutions, especially when seen in their earliest origin in Islam, the following judgment of C. E. Mallet makes more historical sense, and A. B. Emden rightly draws attention to it.[19]

> To dismiss Balliol as an almhouse because it represents an older and simpler type of foundation than the Merton model, is surely to ignore the way in which the earliest colleges came into existence, not at Balliol only but at Paris and elsewhere . . . Walter de Merton's plans began as early as 1262 . . . John Balliol's plans began still earlier. William of Durham's bequest dates from 1249, but it was not used immediately to found a college . . . Balliol represents the oldest House of Scholars in Oxford whose existence can be proved and not merely conjectured. Merton represents the oldest corporation organized on what became the regular English collegiate system. University represents the oldest benefaction out of which a college subsequently grew.[20]

Mallet's statement may be paraphrased as follows: If we are talking about colleges historically, then, of the first three colleges mentioned, Balliol is the *first college* of Oxford; University College is the *first benefaction* which later resulted in a college; and Merton, the first *incorporated college*. At Oxford, there were *three firsts*, not only one.[21]

The 'Collège des Dix-Huit', founded by John of London, is the earliest known foundation for the purpose of lodging scholars, not the earliest of charitable foundations as such. John of London was not innovating in creating a foundation without the benefit of authorization from the sovereign; other foundations for charitable purposes had already been created in France without royal charter. John's foundation appears to have been the first of its kind in its purpose: a place of lodging for poor scholars; and as such, he may have been influenced by what he saw or heard while on a pilgrimage to Jerusalem. Though madrasas were not known to have existed in Jerusalem proper, by 1180 they were numerous in the neighbouring areas. Moreover, John's house of scholars has the same purpose as some of the khans in

Islam, which were numerous in the Muslim world, and one of whose purposes was to lodge students attending the nearby masjid-college.

3. The College-University as an Incorporated Charitable Trust

The college-university is typical of Colonial America. Harvard, William and Mary, Yale, Princeton, Columbia, College at Philadelphia (later, University of Pennsylvania), Brown, Rutgers and Dartmouth were all founded as colleges from the first half of the seventeenth century to the second half of the eighteenth, that is, before the American Revolution. They were colleges in that they were established privately as charitable foundations; but they were also incorporated and had the university prerogative of granting degrees.

This type of institution, as an incorporated charitable trust, could be traced back *ultimately* to Merton College, which served as a model for subsequent colleges in Oxford and Cambridge. But it differed from Merton in that it granted degrees; whereas English colleges were residences for students attending the university. It would be more in keeping with history to seek its origins elsewhere. The antecedents are more correctly described in the case of Yale University *v.* New Haven.[22]

> In establishing the universities in the new world, the limitations of the people compelled the founder to follow the example of Trinity College, Dublin, and Marischal College, Aberdeen, and not that of Oxford and Cambridge. Upon the same corporation was conferred the power of the university in granting degrees and of the college in government; and such community and the buildings required for its use were known as 'The College'.[23]

The argument for Yale pointed out that in Dublin, Trinity was variously called 'Trinity College, Dublin', 'Dublin University', and 'The University of Trinity College, Dublin'; and in Aberdeen, Scotland, Marischal College was founded as both 'a college and university'.[24] The argument then went on to describe Yale's foundation:

> In 1698 . . . ten of the principal ministers agreed to stand as trustees to found, erect and govern a college. They formed themselves into a society at New Haven in 1700, and the same year, at a meeting at Branford, they founded *the University of Yale College.*[25]

a. Sigüenza, King's, Marischal and Trinity

The 'college-University', in the history of institutions of learning, is an interesting development that can be adequately explained only by the legal concepts at the basis of each of the two members of this hyphenated term; namely, the charitable trust for the college, and the corporation for the university.

Rashdall speaks[26] of the fusion of a college and a university when treating of the University of Sigüenza in Spain (1489). In 1477, a

college for a rector and twelve scholars (=students) with four student-servitors was founded and endowed by the archdeacon, and patronage was reserved for him and his heirs; and in 1489 Innocent VIII authorized

> the students of the college to receive the degree of bachelor from the doctors or masters of the studium and the degrees of doctor and licentiate from the bishop as chancellor after examination by the doctors, and conferring upon them all the privileges enjoyed by graduates of other universities. A college and a university were thus fused into one, the rector of the college . . . becoming also rector of the university.

This became the model for similar college-universities later at Alcalá and elsewhere in Spain.[27]

In the college-university of Sigüenza the factor determining its character as a college was the endowment for a rector, twelve students and four student-servitors; and the factor determining its character as a university was the granting of degrees. There was one rector for both the college and the university.

After Spain, college-universities were founded in Scotland and Ireland. In Scotland, two such institutions were founded, King's College in 1494 and Marischal College in 1593; and in Ireland, Trinity College in 1591.

b. Colleges of Colonial America: The Case of Dartmouth

The nature of the development of college-universities in Colonial America may be clearly understood from the legal opinions of the justices of the United States Supreme Court given in the case of 'The Trustees of Dartmouth College *v.* Woodward',[28] argued and adjudged in 1819. The arguments make clear the dual legal character of the college-university: a privately endowed charitable trust, and a corporation, fused into one. Daniel Webster used the Statute of Charitable Uses (43 Elizabeth Chapter 4) as a basis for his argument against the State of New Hampshire. He argued that New Hampshire could not change the status of Dartmouth College from that of a private institution to that of a State University against the wishes of the trustees of Dartmouth College. One of the basic arguments was that the college was a *private* charity.[29]

The case of Dartmouth College *v.* Woodward deals with the specific institution of the college as a charitable trust, a charitable trust that also was incorporated; hence a discussion of not only the legal status of the college, but also of that of the corporation.

Chief Justice Marshall's opinion deals with the corporation:

> an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence.

> These are such as supposed best calculated to effect the object for which it was created. Among the most important are immortality, and if the expression may be allowed, individuality; *properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual.*[30]

Having defined the corporation, Justice Marshall goes on to determine its relationship to the private charity, stating that 'in these private eleemosynary institutions, the body corporate, [possesses] the whole legal and equitable interest, and completely representing the donors, for the purpose of executing the trust, has rights which are protected by the constitution of the United States'.[31]

Justice Washington quotes Justice Blackstone's definition of a corporation as a franchise: it is, he says, 'a franchise of a number of persons, to be incorporated and exist as a body politic, with a power to maintain perpetual succession, and to do corporate acts, and each individual of such corporation is also said to have a franchise, a freedom'.[32]

Justice Story defines an aggregate corporation at common law as

> a collection of individuals united into one collective body, under a special name, and possessing certain immunities, privileges and capacities in its collective character, which do not belong to the natural persons composing it. Among other things it possesses *the capacity of perpetual succession*, and of *acting by the collective vote or will of its component members*, and of suing and being sued in all things touching its corporate rights and duties. It is, in short, an artificial person, existing in contemplation of law, and endowed with certain powers and franchises which, though they must be exercised through the medium of its natural members, are yet considered as subsisting in the corporation itself, as distinctly as if it were a real personage. Hence such a corporation may sue and be sued by its own members; and may contract with them in the same manner as with any strangers.[33]

The nature of the charity is not altered by the incorporating act. For as Webster argued,

> the granting of the corporation is but making the trust perpetual, and does not alter the nature of the charity. The very object sought in obtaining such charter, is to make and keep it private property, and to clothe it with all the security and inviolability of private property. The intent is that there shall be a legal private ownership, and that the legal owners shall maintain and protect the property, for the benefit of those for whose use it was designed.[34]

Webster had quoted Lord Hardwicke as saying that 'the Charter of the Crown cannot make a charity more or less public, but only *more permanent* than it would otherwise be'.[35]

Supporting Webster's argument, Justice Marshall sees the incorporation of eleemosynary institutions as almost indispensable in order to carry out their objects. The government itself uses the incorporating act to promote objects beneficial to the country; 'and this benefit constitutes the consideration, and in most cases, the sole consideration of the grant. *In most eleemosynary institutions, the object would be difficult, perhaps unattainable, without the aid of a charter of incorporation*'.[36] This benefit being the sole consideration, the government can expect to have no power over the institution so incorporated. Justice Marshall continues:

> From the fact, then, that a charter of incorporation has been granted, nothing can be inferred which changes the character of the institution, or transfers to the government any new power over it. The character of civil institutions does not grow out of their incorporation, *but out of the manner in which they are formed, and the objects for which they are created.* The right to change them is not founded on their being incorporated, but on their being instruments of government, created for its purposes. The same institutions, created for the same objects, though not incorporated, would be public institutions, and, of course, be controllable by the legislature. The incorporating act neither gives nor prevents this control. *Neither, in reason, can the incorporating act change the character of a private eleemosynary institution.*[37]

Justice Story defines eleemosynary corporations as 'constituted for the perpetual distribution of the free alms and bounty of the founder, *in such manner as he has directed*; and in this class are ranked *hospitals* for the relief of poor and indigent persons, and *colleges* for the promotion of learning and piety, and the support of persons engaged in literary pursuits'.[38]

Justice Marshall then comes to consider the character of Dartmouth College. He sees it as

> an elementary institution, incorporated for the purpose of perpetuating the application of the bounty of the donors, to the specified objects of the bounty; that its trustees or governors were originally named by the founder, and invested with the power of perpetuating themselves; but they are not public officers, nor is it a civil institution, participating in the administration of government; but a charity school, or a seminary of education, *incorporated for the perpetuation of its property, and the perpetual application of that property to the objects of its creation.*[39]

Of prime importance here is the fact that the incorporation of a charitable trust was considered necessary in order to carry out the object of such a trust. Justice Marshall, quoted above, says that 'the object would be difficult, perhaps unattainable, without the aid of a charter of incorporation'.[40] He does not explain why this is so until

much later in his opinion:

> The founders of the college contracted, not merely for the perpetual application of the funds which they gave, to the objects for which those funds were given; they contracted also, to secure that application by the constitution of the corporation. They contracted for a system, which should, as far as human foresight can provide, retain forever the government of the literary institution they had formed, in the hands of persons approved by themselves.[41]

The reasons here given for the act of incorporation are all found in the waqf or charitable trust: inviolability, perpetuity. Yet the waqf did not always prove to be as secure as the incorporated trust. The sovereign of the moment sometimes stepped in to 'appropriate' its property as already seen in the previous pages. If Dartmouth College's only recourse had been to the State of New Hampshire, it would have become a State University controlled by the State legislature. The difference in security and certainty of perpetuity between waqf and incorporated charitable trust resides in the fact that the private charity in the State of New Hampshire was protected by the Federal government through the Supreme Court, defining the Dartmouth College corporation as a private legal person with rights protected by the higher law of the land, the Constitution of the United States.

The Colleges first came into existence as charitable trusts, eleemosynary institutions, pure and simple. As such, they were exposed to the weaknesses of the charitable trust as a form of organization whose perpetuity was not as secure as that of the corporation. This chief factor, to my mind, explains the durability of the colleges of Oxford and Cambridge. Their colleges, from Merton on, were *incorporated* charitable trusts, which made them artificial persons endowed with legal capacity, protected by the law of the land which insured their constitutional rights as legal persons, and the perpetual application of their properties to the objects of their creation.

When the college was imported into such American colonies as Massachusetts, Virginia, Connecticut and Pennsylvania, it was founded, at the outset, as an *incorporated* charitable trust.

This dual legal character of the college explains the confusion in terminology in the United States. In the Middle Ages, at the time of the rise of universities in the twelfth and thirteenth centuries, there was no confusion between university and college. The university was a guild or corporation of masters (sometimes of students, as in Bologna), and the College, a charitable trust founded for the support of poor students attending the university. The confusion sets in with the rise of colleges in the American colonies, the seeds of confusion having already been planted in the Old World. The foundation of Yale as '*the University of Yale College*', was preceded by Trinity, as

'Trinity College, Dublin', 'Dublin University', 'The University of Trinity College, Dublin'; and by Marischal, as 'a college and university'.[42]

In 1607, the first appropriation was made in the colony of Virginia to endow a 'University'. It was not until 1660 and 1693 that the institution was fully established. In 1660, the colonial legislature passed an Act endowing 'The College', and in 1693 William III established the university, the charter of which described it as 'a certain place of universal study or perpetual college of divinity, philosophy, languages and other good arts and science'. It was named 'The College of William and Mary in Virginia'.[43]

The development of higher institutions of learning in the colonies followed a trend which was the reverse of that of England. Rather than having a university first, then colleges, they began with a college and made it into a university. This trend is described above in the case of Yale University *v.* New Haven.[44]

In the case of Harvard, the General Court at Boston appropriated four hundred pounds to establish an institution of higher learning. This was in 1630. In 1642, the Court established overseers of 'a College founded in Cambridge'. This was later interpreted to mean a 'university', by Mather, who in 1692 said the General Assembly granted 'a charter to this University'. The Massachusetts Constitution of 1779 recognized 'The University at Cambridge'.[45]

As long as the college remained a simple charitable trust its character was kept distinct from that of the university, a corporate body. But from the moment the college became an incorporated charitable trust, its identity was bound to become confused with that of the university, as indeed it did in the American Colonies. From the strictly legal point of view, a foundation begins to exist when *property* or *funds* are donated.[46]

Webster, in speaking of the foundation of colleges, quotes Lord Mansfield on colleges as eleemosynary foundations:

> The foundations of colleges are to be considered in two views, viz. as they are corporations, and as they are eleemosynary. As eleemosynary, they are the creation of the founder; he may delegate his power either generally or specially; he may prescribe particular modes and manners, as to the exercise of part of it. If he makes a general visitor (as by the general words *visitator sit*) the person so constituted has all incidental power; but he may be restrained as to particular instances. The founder may appoint a special visitor for a particular purpose and no further. The founder may make a general visitor; and yet appoint an inferior particular power, to be executed without going to the visitor in the first instance.[47]

Webster then says that 'even if the King be founder, if he grant a

charter incorporating trustees and governors, they are visitors, and the King cannot visit'.[48]

Justice Story gives the justification for visitorial power in charitable trusts, saying

> to all eleemosynary corporations a visitorial power attaches, as a necessary incident; for these corporations being composed of individuals, subject to human infirmities, are liable, as well as private persons, to deviate from the end of their institution. The law, therefore, has provided, that there shall somewhere exist a power to visit, inquire into, and correct all irregularities and abuses in such corporation, and to compel the original purposes of the charity to be faithfully fulfilled. . . . And by common right of the dotation the founder and his heirs are the legal visitors, unless the founder has appointed and assigned another person to be visitor. For the founder may, if he please, at the time of the endowment, part with his visitorial power, and the person to whom it is assigned will, in that case, possess it in exclusion of the founder's heirs. This visitorial power is, therefore, an hereditament founded in property, and valuable in intendment of law; and stands upon the maxim that he who gives his property, has the right to regulate it in future.

Story goes on to say that patronage 'includes also the legal right of patronage, for as Lord Holt justly observes "patronage and visitation are necessary consequents one upon another"'.[49]

Under the act of incorporation the trustees become the legal owners of the property.[50] This is not the case when the charitable trust is not incorporated. Strictly speaking, even in the case of an incorporated charitable trust the property is not so owned by the trustees that they can dispose of it for their own personal benefit.

There is general consensus among jurists that the act of incorporation bestows a more secure form of perpetuity upon the charitable trust so incorporated. In a charitable trust the institution is governed according to the letter of the trust instrument. The stipulations of the founder, as long as they do not transgress the law of the land (in the West), or as long as they do not contravene the religious tenets (in Islam), are closely followed and applied to the letter. On the other hand, once the charitable trust is incorporated, the statutes regulating the trust can be modified by the trustees, and this is allowed as long as the purposes of the trust continue to be fulfilled. In the one case there is a strict adherence to the stipulations of the founder; in the other, there is flexibility and a great amount of leeway. Also, the trustees can perpetuate themselves, being replaced as they come to the age of retirement, or otherwise end their trusteeship. The lack of change in the former case stunts growth and development which, on the other hand, become possible for the latter. This is one of the

reasons why untold numbers of colleges in Islam and the West came into existence and then disappeared, often depending upon the relative flexibility of the stipulations their founders made in the instruments of their trusts. The colleges of Oxford and Cambridge which became the object of incorporating acts lasted through the centuries and served as the distant models for the colleges of the American colonies, surviving to this day.

This is the fundamental difference between the college, long a product of the Muslim East, and the college as it developed in Oxford. It explains why the former type did not survive, whereas the latter thrived and was copied elsewhere. The Oxford type of college was thus enabled, by the fact of incorporation, to escape the vicissitudes of the unincorporated endowment. It was Adam Smith who remarked that 'the effect of endowment on those entrusted with any cause is necessarily soporific'. This is hardly true with colleges organized on the Merton model, where there developed an esprit de corps, and a sense of belonging which each fellow carried into his later years long after he left the college. This same spirit still exists in the better colleges of Britain and North America. Indeed, the 'college-universities' depend on this very spirit to keep their heads above water in times of financial trouble by soliciting funds from the 'alumni', remindful of their 'alma mater'. No such thing existed in those colleges, whether in Islam or the West, which kept intact the Muslim model. There, each fellow was interested in what the endowment had for him as a beneficiary; he made the most of his fellowship, and once his studies were completed, showed no further interest.

This difference in the attitude of the members of the college is brought out by Rashdall when he treats of the differences between the collegiate systems of Paris and Oxford. The main difference can be seen especially with the foundation of Merton College. Here 'the scholars were in a different position to the "bursars" of continental colleges. They were corporate landowners, not (like the scholars of Balliol and many Parisian colleges) pensioners receiving an endowment administered by others'.[51] There was an important difference between the ideal of an Oxford college and that of Paris:

> The ideal of the Parisian founder was a body of students governed by a master, though the character of this rule varied with the age and status of those students. The ideal of an Oxford college was rather *a self-governing corporation* whose ordinary administration, like that of a monastery, was in the hands of its *elected* head, with the assistance of a certain number of seniors, while the consent of all was required for the more important legal acts. Even the youngest full member of the foundation took part in the election of the master or warden.[52]

Thus the foundationers of a college on the Merton model had a

stake in their college. For this reason, the interest of English fellows in their property tended to prevent the waste, dissipation and loss of college revenues that occurred so frequently in the Parisian colleges.[53] At Paris, a scholar's connection with his college usually ceased during the long vacation, whereas in the English colleges, residence during a great part of the long vacation was actually enforced.[54] Except in the event of becoming voidable upon promotion to a benefice of a certain amount, a fellowship was otherwise, as a rule, tenable for life in an English college.[55] The College of Merton is a watershed in the history of colleges, those before it being simply eleemosynary institutions, based on the charitable trust, or waqf, and those after it, and following its model, being incorporated; the former being static in character, the latter dynamic and endowed with the capacity and flexibility to change with the changing of the times. For, as MacIver says, 'If institutions are to serve to the utmost, they must be changed as life changes, transformed as life itself takes new directions'.[56] This change was not fully possible with institutions based on the unincorporated charitable trusts, because governed by unalterable stipulations that had to be followed as set down by the founder. The incorporated charitable trust provided for flexibility through its self-perpetuating trustees who could alter the statutes as the need arose.

4. Waqf in Western Islam and Two Universities of Southern Europe

Though the concept of the university as a corporation was foreign to Islam, the experience of Western Islam may have had an influence on the creation of two universities in southern Europe: Palencia in Spain, and Naples in Italy. Palencia was founded by King Alfonso VIII of Castile in 1208–9, Naples in 1224, by Emperor Frederick II.

Previously, universities had come into existence as the result of 'educational efficiency and widespread appreciation'.[57] Palencia and Naples were radical exceptions. Palencia was founded by royal command – Alfonso VIII did not even issue a formal deed of foundation; and Naples was created by a stroke of Frederick II's pen.[58] A leading feature of the universities of the Spanish Peninsula is described as follows by Rashdall:

> Their most conspicuous characteristic was their close connections with the crown. *They were created by the sovereigns of the various kingdoms*, and many of them long or permanently continued to dispense with any further authorization than was conveyed by royal charters. These *studia generalia* 'respectu regni' are, in any formally recognized shape, *peculiar to the Spanish Peninsula*. . . .[59]

Palencia was the first university of this type, a *studium generale* 'respectu regni' that is, brought into existence by royal authority. Alfonso VIII invited masters from the famous schools, perhaps

Bologna and Paris, to teach in Palencia for salaries.[60] Frederick II, in the year following the foundation of his university, deprived the rival Bologna of the *studium* and invited professors and students to come to Naples.[61]

These two instances were clearly radical departures from the normal way in which universities came into existence. To appreciate how they could have been influenced by the institutions of learning in contemporary Western Islam, it will be necessary to look briefly into the legal basis of Muslim institutions in Spain and North Africa.[62]

The Maliki madhab was predominant in Western Islam. Unlike the other Sunni schools of law, it did not allow waqf institutions to be controlled by their founders. The founder of a madrasa could not appoint himself as its trustee-administrator. It thus discouraged the founding of madrasas by private individuals, who frequently resorted to waqf in order to put their wealth out of the reach of confiscating sovereigns and immobilize the corpus for the benefit of their heir-descendants in perpetuity. As this was not possible under Maliki law, Maliki madrasas did not thrive in countries where Maliki law was predominant. Baghdad had no known Maliki madrasas. Damascus produced four over a period of centuries. Egypt had only one that was strictly for the Malikis, and six others where the Maliki school was only one of the Sunni schools represented. In the whole of North Africa, there were approximately twelve Maliki madrasas. Clearly, Maliki madrasas were far from thriving in Islam.

It therefore fell to the sovereigns and some other highly placed men of power and influence to found colleges in Spain and North Africa, founders whose motives in so doing lay primarily elsewhere than in providing for their descendants.

Recently, A. B. Cobban has suggested that Spanish universities 'respectu regni' may have been inspired by Frederick II's University of Naples.[63] This is unlikely, since the University of Palencia's foundation preceded that of Naples by more than a decade. Rather the influence may have been the other way around. However, it is more likely that the radical departure from the original idea of the university was inspired by a source common to both sovereign founders. They were in a position to be influenced directly by the experience of Western Islam, where a peculiarity of the predominant Maliki law of waqf *discouraged all but sovereigns to found colleges*. For these founders were motivated by the prestige brought to themselves and to their particular realms by their foundations.

III. INSTRUCTION

In the Middle Ages an imaginary intellectual from the world of Islam, say Baghdad, on a visit to the world of scholarship in the Christian West, far from feeling out of his element, would be quite

comfortable in his new surroundings. Quite familiar to him would be the colleges of Paris and Oxford, with their scholars and fellows, and their masters and doctors, aided by their assistants, repetitors and servitors. In attending the school lessons and exercises, he would feel at home with the lectures and disputations. Indeed, as a visiting scholar, he would expect the courtesy of being invited to engage in a disputation or two, preferably three – the usual number for Baghdad – with his host colleagues. Hardly anything on the scholarly scene would be unfamiliar to him, not even the non-Islamic university, for that was but an abstraction, the buildings belonging, as they did, to the all too familiar colleges. Not only would studies, the methods of teaching and exercises be known to him, but also the very direction taken by the main movements of scholarly activity; and studies, exercises, methods and movements would all combine to make him feel that the scholastic landscape he was visiting was but an extension of that from which he came. How could it be otherwise when the intellectual landscape could hardly hold any surprises for him: the prominence and pervasiveness of legal studies (including the ars dictaminis); the feverish concern with dialectic, in two varieties, that of Bologna and that of Paris; the scholastic method in law, theology and medicine, conducted according to the rules of dialectic, practised orally in the disputations, and written in the great summae; the students' 'reports' of disputations and professorial lectures; the impressive list of technical terms representing the same functions as their Islamic counterparts, as well as being frequently the literal translations of the corresponding Arabic terms – all of this and more, including the subordination of the literary arts so depressing to Thaʿlab and so eloquently deplored by John of Salisbury.

Our imaginary visitor would have no cause to wonder how the parallel developments had taken place. He would, to begin with, be highly conscious of the superiority of his culture. Back home in the East, he would have already met many of his Muslim brethren from the Muslim West, natives and residents of Spain, Sicily, southern Italy and southern France, who had come for pilgrimage and the pursuit of knowledge. He would have already seen the steady stream of pilgrim scholars seeking the centres of Muslim culture: Baghdad, from which radiated the new studies and the scholastic method; and Damascus and Cairo, in which the foundation of colleges, after Baghdad, was developing at galloping speed. He had very likely crossed the Mediterranean in the company of returning scholars laden with their scholarly booty of books. In Toledo and Salerno, he would be proud to see how avidly Arabic books were being translated into Latin; and proud to see the many Christian scholars from different Christian lands, themselves proud of their knowledge of Arabic learning. He would sympathize with Adelard of Bath, imbued with

Arabic learning, in his attempt to convince his nephew of its superior character, and would support him in his effort to explain that not authority alone, but authority and reason must both be pursued with equal vigour. He would shake his head appreciatively while listening to the twenty-year-old Boy Wonder, Fernando of Cordova, engaged in disputation in the College of Navarre in Paris, who would remind him of the bright lads back home, incredibly brilliant and clever in his replies to all the objections proposed, a perfect product of that phenomenon in Spain despairingly deplored by the Mozarab Alvaro of Cordova in his *Indiculo luminoso*:

> My fellow-Christians delight in the poems and romances of the Arabs; they study the works of Muslim theologians and philosophers, not in order to refute them, but to acquire a correct and elegant Arabic style. Where today can a layman be found who reads the Latin commentaries on Holy Scriptures? Who is there that studies the Gospels, the Prophets, the Apostles? Alas! the young Christians who are most conspicuous for their talents have no knowledge of any literature or language save the Arabic; they read and study with avidity Arabian books; they amass whole libraries of them at a vast cost, and they everywhere sing the praises of Arabian lore. On the other hand, at the mention of Christian books they disdainfully protest that such works are unworthy of their notice. The pity of it! Christians have forgotten their own tongue and scarce one in a thousand can be found able to compose in fair Latin a letter to a friend! But when it comes to writing Arabic, how many there are who can express themselves in that language with the greatest elegance, and even compose verses which surpass in formal correctness those of the Arabs themselves![64]

Of course, we have no knowledge of such a visitor to the Christian West: the magnetism of Islamic learning made it so that the thrust of travel was rather eastward. But no matter; our imaginary visitor, had he been endowed with a life span of a couple of centuries, could have witnessed the development of Muslim education from its centre in his home-town of Baghdad in a westward move to Syria, Egypt, North Africa, and on to Spain, Sicily and southern Italy, and from there to other parts of Christendom. It moved with the moving scholars, pilgrims, crusaders, merchants and travellers; it travelled with them by word of mouth, as well as in the massive movement of books.

The two major methods of teaching in the Middle Ages, as early as the turn of the ninth–tenth century in Islam, and the twelfth in the West, were the lecture and the disputation, both of which will now be discussed.

1. The Lecture

The lecture, in Latin, was called lectio. When dealing with this term, Hugh of St Victor pointed out its three-fold meaning and explained it; and John of Salisbury, feeling that its ambiguity should be removed, suggested adding another term. Both Hugh and John wrote in the twelfth century; one in the first half of it, the other in the second.

The reason for their preoccupation with the term resulted from the fact that its twelfth-century content was something new, added to its usual meaning. Its content, in fact, corresponded to that of the Arabic term qira'a, which had the same meaning as lectio.

Both lectio and qira'a derive from the verbs legere and qara'a, meaning to read out, read aloud, recite, and lectio and qira'a mean recitation, reading.

Hugh of St Victor, in his *Didascalicon*, gives three acceptations for the term lectio: (1) the active sense, when referring to the professor teaching the student; (2) the passive sense, when referring to the student being taught by the professor; and (3) the absolute sense, when referring to a person's reading, without reference to teaching or being taught. Here is Hugh's explanation:

> Lectio est cum ex his quae scripta sunt, regulis et praeceptis informatur. Trimodum est lectionis genus, docentis, discentis, vel per se inspicientis. Dicimus enim: lego librum illi, et lego librum ab illo; et lego librum.
>
> (Reading consists of informing our minds by rules and precepts taken from books. There are three kinds of reading: the teacher's, the learner's, and the independent reader's. For we say, 'I am reading the book to him', 'I am reading the book under him', and 'I am reading the book'.)[65]

John of Salisbury, in his *Metalogicon*, grapples with the term's equivocal character:

> legendi uerbum equiuocum est, tam ad docentis et discentis exercitium quam ad occupationem per se scrutantis scripturas; alterum, id est quod inter doctorem et discipulum communicatur, (ut uerbo utamur Quintiliani) dicatur prelectio alterum quod ad scrutinium meditantis accedit, lectio simpliciter appellatur.
>
> (the word 'reading' is equivocal. It may refer either to the activity of teaching and being taught, or to the occupation of studying written things by oneself. Consequently, the former, the intercommunication between teacher and learner, may be termed (to use Quintilian's word) the 'lecture'; the latter, or the scrutiny by the student, the reading, simply so called.)[66]

John attempted to provide a solution to the problem by using Quintilian's (d.c. A.D. 100) *prelectio* for the teacher. If John's solution did not win acceptance,[67] one reason may have been that the three-fold

aspect of the problem needed three different terms, not two. If *prelectio* was to be applied to the teacher alone, *lectio* would still be equivocally used for the learner and independent reader. Moreover, the problem concerned not the substantive alone, but also and more frequently the verb; and *praelegere* in Classical Latin was a verb with an entirely unrelated meaning.

However this may be, the problem was a twelfth-century Latin problem caused by the new learning; it was not originally a problem of classical Latin, but rather of Arabic. The term qara'a, to read out, to recite, originally derived its meaning, to teach, from the term qur'an (another infinitive noun of the verb qara'a) meaning 'recitation'. The verb qara'a, with the preposition 'alā, used in the absolute, without a complement, means he read, or recited, the Koran to someone as a teacher or an informant; and the verb and its preposition later developed the additional technical meaning, as a pupil, or learner, to his shaikh, or preceptor; and the infinitive noun of the verb in this sense is qira'a, recitation, reading.[68] Applied first to the recitation and teaching of the Koran, the verb qara'a was then used to designate teaching in general, and the subject-matter that was taught came after the verb, as its complement.

Thus the equivocal meaning of the verb to read (qara'a) and its infinitive noun, reading (qira'a), is native to Islam and goes back to the recitation and teaching of the Koran. The Arabic qara'a 'alā, verb and preposition, had a double meaning: (1) to read aloud, or recite, to; and (2) to read aloud, or recite, under. The sentence, qara'a 'l-kitāba 'alā Zaid, meant he read the book to Zaid (the student), as well as he read the book under Zaid, under the direction of Zaid (the professor). In other words, the preposition 'alā, in this context, had the meaning of the Latin illi, to him, as well as the meaning of ab illo, under him, in the statement of Hugh of St Victor quoted above.

Arabic, like Latin, had ways of distinguishing between the three acceptations of the verb. For instance, the causative fourth form of the verb, aqra'a, (infinitive noun, iqra') referred to the teacher teaching the student to read, and with the subject-matter as complement, to cause the student to read such-and-such a subject: qara'a 'l-fiqha 'alā Zaid, he read (=studied) law under Zaid. (To this day, a student at Oxford or Cambridge 'reads' law or some other subject; whereas the term *qara'a*, in this sense, has disappeared from the modern Arabic scene.) And as regards the independent reader, the verb qara'a alone means to read, to recite. To emphasize the fact of independent reading, the addition of li-nafsih, to himself, was added to the verb: qara'a li-nafsih. More interesting in this regard was the addition of nafsih to the equivocal verb plus preposition: qara'a 'alā nafsih, he read aloud, or recited, to himself, or under his own direction, to emphasize the fact that the person in question had not

had the benefit of studying under a master, but did so under himself.[69]

The verb qara'a was also related technically to the verb samiʿa, to hear. In the sentence, qara'a ʿUmaru 'l-kitāba ʿalā Zaid (Omar read the book under Zaid), this 'reading' applied not only to Omar, but also to his classmates attending the 'reading' and participating in the activities of the class along with Omar. Therefore those who heard the 'reading' were, technically speaking, 'readers' of the text through hearing it, and noting, along with Omar, the corrections and explanations made by the teacher Zaid.

That samiʿa, to hear, meant also technically to read, qara'a, is evident in a passage referring to a ninth–tenth century scholar. The verb *samiʿa*, used twice, could very easily be replaced by *qara'a*. Here is the passage: kāna yashtarī mina 'l-warrāqina 'l-kutuba 'llatī lam yakun samiʿahā, wa-yasmaʿu fīhā li-nafsih (he used to buy from the booksellers those books which he had not heard [=read] and would 'hear' [=read] in them to himself.)[70] The synonymity of qara'a and samiʿa in this context is quite evident.

The certificate given by the professor to the student, or students, named therein, was written usually at the end of the book or treatise and signed. It certified that the student(s) 'read' the work under him. The term for this 'reading'-certificate was samaʿ (audition), an infinitive noun of the verb samiʿa, to hear: an additional testimony to the oral-aural nature of instruction, and the synonymity of 'reading' and 'hearing'.

The classical Latin legere and the classical Arabic qara'a have in common the meanings of to bring together, gather, collect, as well as to read, peruse, and to read out, read aloud, recite. But the three equivocal acceptations described above were a development of medieval Islamic education, absent from both classical Latin as well as modern Arabic. The preoccupation of Hugh of St Victor and John of Salisbury with the equivocal application of the term 'reading', and the need they felt to supply, in the one case, an explanation, and in the other, a remedy, points to the intrusion of an innovation not yet familiar to their readers. On the other hand, medieval Muslim writers took the term for granted; it had simply grown out of their preoccupation with the study of the sacred scriptures.

2. The Report

In his studies on legal history, E.M. Meijers describes the works of Révigny as having been preserved entirely in the form of courses for his students, and collected by one of them. He first warns that these reports should not be considered as course notes taken by any ordinary student; were they such, they would have had several versions differing from each other according to the year the course was given, and the care taken in transcribing them. But that was not the

case, since the textual agreement is such that they can only be considered as deriving from a common source. He conjectures that they may even have been the work of one or more students working in concert with the professor. This method of working was known to have been that followed by the reporters (reportatores) of St Thomas Aquinas's courses.[71]

In pointing out that Révigny's works have come down in the form of reports (reportationes), Meijers wished to ward off any unjust criticism that might otherwise be made regarding them. Being reports of courses there were many obscure passages. Révigny's works were courses meant for teaching, not textbooks prepared by the professor: the text is not carefully written; the professor was speaking from notes; often one doctrine or one question was treated in detail; many divergent opinions are cited without attribution to their authors; dialectical digressions of no great importance are strewn here and there. These were the many signs indicating that they were reports of course notes prepared by students, not the professor's finished work.[72]

Elsewhere, Meijers describes the *reportatio* of Nicolaus Furiosus, affording another view of this type of legal literature:

> The *reportatio* of Nic(olaus) Furiosus is not the work of a student who takes notes during the courses. Rather it is a résumé of the opinions of Johannes. The author often adds to them the opinions of other authors, contemporaries of Johannes, especially Albericus and Placentinus. If Johannes has mentioned a question without giving a solution, the *reportator* dares to propose his personal solution.[73]

Meijers goes on to say that the reportator gives a dissenting opinion.[74]

The reportatio is clearly the same product as the ta'liqa of Islamic legal literature. Student note-taking is the activity of ta'liq, whether from the professor's lecture or his course notes or his finished works. The case of Ghazzali will serve for comparison with that of Nicolaus Furiosus. The former's work entitled *al-Mankhūl*, The Sifted, mentioned previously,[75] was a report (ta'liqa, reportatio) of the course notes of his master al-Juwaini. At the end of the work, Ghazzali tells how he dealt with the master's course notes, saying that he limited himself

> wa- 'li 'qtisāri 'alā mā dhakarahū Imām al-Ḥaramain . . . fī ta'līqātih min ghairi tabdūlin fī 'l-ma'nā wa-ta'līl, siwā takallufin fī tahdhībi kulli kitābin bi-taqsīmi fusūl, wa-tabwībi abwāb, rauman li-tashīli 'l-muṭāla'ati 'inda masīsi 'l-ḥājati ilā 'l-murāja'a.
>
> (to what Imam al-Haramain [al-Juwaini] has said in his course notes (ta'līqātihī), without modifying a meaning or adding an interpretation, except for taking great pains to revise each book

by dividing it into sections and chapters, in the desire of facilitating the reading when the need for consultation arises.)[76]

There is no question here but that the disciple has taken the liberty to change the format of his master's course notes. This, at least, was what he admitted doing. But a perusal of *al-Mankhūl* will show that the disciple had even 'dared' to allow himself a number of opinions dissenting from those of his master. This was surely a reason for the master's exclamation, upon recognition of the difference between his course notes and the disciple's report, 'You have buried me alive! Could you not have waited till I was dead?' (dafantanī wa-anā ḥaiy! hallā ṣabarta ḥattā amūt!).[77]

3. The Scholastic Method as Finished Product: The Summa

The equivocal term lectio made its abrupt appearance in the first half of the twelfth century. Its equivocal character in medieval Latin was native to its parallel Arabic term qira'a in the Islamic system of education. The lectio and reportatio were not isolated phenomena. Another phenomenon, the sic et non, made a dramatically abrupt appearance in the Christian West around 1100. It, too, was native to its parallel Islamic term, khilaf, already part and parcel of the Islamic legal system in Islam's first century, the seventh A.D.

The khilaf, or sic et non, was one of three basic elements of what came to be called tariqat an-nazar (the method of disputation), or the scholastic method; the other two elements were jadal, dialectic, and munazara, disputation. These last two existed in the Christian West prior to the twelfth century, and in the Islamic East much earlier, albeit at less sophisticated levels of development in both areas.

a. The Studies of Endres and Grabmann

The fundamental work on the scholastic method is Martin Grabmann's masterful history in two volumes.[78] Before him, and on a much more modest scale, J. Endres had made an excellent start.[79] Before Endres it was generally believed that Aristotle was the father of the scholastic method. This notion, although not true, was not altogether false. The article of Endres helped to put certain matters straight, and to focus on the origin and early development of the method. His conclusion was that the scholastic method was a product of scholasticism itself, and not, as had hitherto been surmised, a product of Aristotelian philosophy.[80] In support of this conclusion, which he realized would appear somewhat strange to those concerned with medieval thought,[81] he sketched what he believed to be the historical development of this method.

The very first beginnings, he says, lie far beyond the point in time when one can speak of a scholasticism at all. He cites the *Sentences* of Prosper of Aquitaine (d. after 455). The *Liber sententiarum Prosperi* is a work of some three hundred 'sentences' (quotations from the Church

Fathers) quoted from St Augustine on matters of dogma. The work has no noticeable order, and is based on this one Father of the Church.

Endres next cites the *Tres libri sententiarum* of Isidore of Seville (d.636) as a work of great importance because of the progress it shows over the Sentences of Prosper: namely, the material is arranged methodically in three books, and instead of a single sentence based on a single authority under each title or theme, there are a number of sentences from each of several authorities. In other words, there is a conscious order and greater fullness of detail. Isidore's work remained a model for all such works down to the turn of the eleventh–twelfth century.

At this time, a new method came into being, the principles of which are found in Abelard's *Sic et Non.* In this work Abelard (d.1142) cites a series of affirmative sentences, matching them with a series of negative sentences, all by Fathers of the Church. The Prologue gives explicit instructions on the method of reconciling these pros and cons, but the author does not apply these rules, and he makes no attempt to reconcile these apparently contradictory opinions. For this reason Abelard was often thought to have used his procedure to produce scepticism in the mind of the reader. Endres denies this on the basis of the explicit rules cited in the Prologue, and concludes that it is only at this point in history, with Abelard, that we can, for the first time, and in a real sense, speak of a scholastic method.[82]

Though he attributes the creation of the scholastic method to scholasticism itself. Endres does not lose sight of the fact that Aristotle had some influence on its later development, but he insists that the original development and the essential arrangement of the method do not go back to him. He points out that those who believe they do trace the method back to the aporias. But the first work that could possibly reflect familiarity with the aporias of Aristotle is the *Summa* of Simon of Tournai at the end of the twelfth century, at a time when the scholastic method was already being used.[83]

Notice that in Endres's analysis, there is a period of five centuries in which there was virtually no development; the *Sentences* of Isidore of Seville provided a model for writers during this long period. Notice also the importance of the twelfth century, with Abelard's *Sic et Non* at the beginning, and the *Summa* of Simon of Tournai at the end. Grabmann devotes a full volume, the larger of the two volumes of his great work, to the twelfth century alone.[84] Clearly the twelfth century is a pivotal point in the history of the scholastic method, as it is in the history of Western medieval civilization generally. It is with good reason that Charles Homer Haskins devoted one of his books to it, entitling it *The Renaissance of the 12th Century.*[85]

Grabmann agrees with Endres that the scholastic method *of instruc-*

tion was the product of scholasticism itself. He praises him on his choice of terms in the title, namely, 'scholastische *Lehr*methode', rather than 'scholastische Methode'. For Grabmann rightly points out that one must distinguish between the outer, external technique of presentation in the scholastic method, and its inner spirit, the very soul of scholasticism, of which the technical schema is merely the vehicle.[86]

Thus the sic-et-non method attributed to Abelard looms large in the history of the scholastic method. Endres, like many other writers up to the present day, makes it the turning-point in this history. Grabmann, on the other hand, has some reservations regarding the sic et non and its origin. Although he accepts the thesis of its importance in the development of the scholastic method, he is doubtful as to its precise significance in this regard; as for its origin, he introduces evidence showing that it did not originate with Abelard. As the origin of the sic-et-non method he cites, in Eastern Christianity, Photius, Patriarch of Constantinople.[87] In the West he cites Bernold of Constance[88] and Ivo of Chartres.[89] Photius (d.891) will be discussed presently when dealing with the East.

Grabmann points out that the polemics written by the canon lawyer Bernold of Constance (d.1100) as an enthusiastic partisan of Pope Gregory VII are of the greatest importance for the history of the scholastic method. In these polemics we find the procedure of citing contradictory sentences of the Fathers, along with rules and instructions on how to go about reconciling them. Bernold therefore stands out as the first known Western representative of that external technique of the scholastic way of writing, until Peter Abelard comes along later with his *Sic et Non.*[90] In other words, a good many years before Abelard, the canon lawyer Bernold of Constance had already used the method that is still to this day attributed to Abelard. A comparison between the rules cited by Bernold and those cited in the Prologue of Abelard's *Sic et Non* reveals almost a word-for-word similarity.[91]

Ivo of Chartres (d.1116) is another canon lawyer who made use of the sic et non method before Abelard. In the Prologue of his *Decretum* he cites the rules for reconciling conflicting texts.[92] The canonical collections of Ivo influenced a whole line of works: the *Sentences* of Alger of Liége, the works of Hugh of St Victor, and the *Sic et Non* of Abelard.[93]

Perhaps the greatest contribution to canon law in the twelfth century was that of Gratian (fl. mid-twelfth century). His monumental work entitled *Concordia discordantium canonum* contains close to 4,000 texts. It is a systematic concordance of judgments in canon law, with rules for the reconciliation of conflicting texts. Gratian was influenced by Ivo of Chartres as well as by Alger of Liége.[94]

These writers were canon lawyers who were influenced by canon

lawyers among their predecessors. Grabmann makes this point clear.[95] At the same time, he recognizes the fact that *later* canonists were influenced in their way of working by the sic-et-non method as it was further developed dialectically by Abelard. This is especially true with canonists who were also theologians, and, precisely as theologians, were influenced by the theologian Abelard as regards both method and content. One example is Roland Bandinelli, who was later to become Pope Alexander III.[96]

The fact is that Bernold and Ivo had already made use of the sic-et-non method before Abelard. And it was from Ivo and Alger, canon lawyers, that the great Gratian borrowed whole passages for his famous *Concordia*.[97]

Why then is Abelard's name so closely connected with the sic-et-non method, to the virtual exclusion of its former practitioners Bernold and Ivo? Speculation here could be given free rein. Perhaps it is simply because the title of his book is *Sic et Non*; or because of Abelard's notoriety as a result of his love affair with Héloise; or because he was a theologian, whereas Bernold and Ivo were canon lawyers, and the scholastic method was seen as connected only with theology, not with law. Most likely, however, the reason may have been in the very nature of Abelard's work; for, in its presentation, it differs radically from that of other authors. Abelard, as we have seen, allows the statements of the Church Fathers to stand as they are, in contradiction of one another, with no attempt at reconciliation; hence the title *Sic et Non*, 'Yes and No'. His work would then find its parallel among Muslim works on khilaf where no reconciliation was attempted, and no effort made to indicate which of the alternative opinions was to be considered as preponderant. Such was the work of Qadi Abu Ya'la (d.458/1066), a Hanbali criticized by the later Hanbali Ibn al-Jauzi.[98] On the other hand, Gratian, for instance, after listing the rules of reconciliation, goes on to reconcile the conflicting statements; hence his title *Concordia discordantium canonum*, 'Concord of Discordant Canons'. Thus each of these two Latin titles is fully descriptive of the contents of the book to which it belongs.

One may therefore wonder if the *Sic et Non* of Abelard did in fact originally contain the list of rules found in the Prologue. The earliest version of this work is believed to have been lost,[99] and the work has had many versions, because copies were made by students and carried away without being controlled by the author. It may well be that the work had acquired its title before the list of rules for reconciliation was added by Abelard, or by the Aberlardian school. The list may have been added later[100] to placate the critics of a method that seemed brazenly to put the Church Fathers at odds with one another,[101] and to keep them there.

In his history, Grabmann expressed doubt about whether it is in

Abelard's sic-et-non method that we are to seek the decisive origin of the technical schema of scholastic works; namely, arguments, counter-arguments, the main thesis, and criticism of the arguments for the challenged opinion. He concedes that if we could answer this question in the affirmative, then the method would indeed constitute a foundation and monument for the history of the formal shaping of scholasticism, the external form in which the scholastic method of the thirteenth century comes to us. In any case, says Grabmann, we must add to the sic-et-non method a coefficient cause; namely, the assimilation by the West of the remaining books of the Aristotelian *Organon*: the *Prior* and *Posterior Analytics*, the *Topics* and the *Sophistical Refutations*.[102] These works had great influence on the shaping of the disputation, which by the time of John of Salisbury (d.1180) had become a distinct form and function of teaching, alongside the lecture and the academic sermon (the *lectio* and the *praedicatio*). John of Salisbury explains the importance of the eighth book of Aristotle's *Topics* for the art of disputation, and says that: 'without it one depends on chance, not on art, in disputation'.[103] For disputation exercises are known to have existed already in the schools as early perhaps as the tenth, but certainly by the eleventh and early twelfth centuries.[104] St Anselm of Canterbury (d.1109) speaks of it in his *De Grammatico*,[105] and Peter Abelard boasts in his *Historia calamitatum* as being superior in disputation to his master William of Champeaux (d.1122).[106] But the *disputatio* was not a distinct form and function of teaching theology until later; it was not as yet separate from the *lectio*.[107] The works of Aristotle just mentioned strengthened dialectic, which was at the basis of this advance in disputation.

b. The Studies of Pelster and Kantorowicz

After Grabmann's work, there were two studies of particular interest on the scholastic method. The first deals with this method in theology; the second, in law. Both focus on the disputed questions, quaestiones disputatae. The authors, F. Pelster and H. Kantorowicz, made their contributions on the basis of newly discovered writings of the twelfth century, for the latter,[108] and of the thirteenth, for the former.[109]

F. Pelster studied Oxford University customs relating to lectures and disputations on the basis of MS. Assisi 158. He pointed out that those who aspired to become masters had to lecture and to take part in the disputations as respondent and opponent. For their lectures, it was to their interest to have commentaries on the Bible and on *Sentences*. For their disputations, it was to their interest 'to make for themselves an extensive collection of questions with answers and counter-arguments'.[110] 'The dominating feature' in teaching 'is the question, the problem. The scholar is encouraged to know a whole crowd of problems and to have an answer ready for each'.[111]

After the lecture, the second leading activity of the teacher was the

disputation, which Pelster describes as 'kernel and apex of the whole scientific instruction not only among artists and theologians but also in the faculties of law and medicine'.[112] As to the origin of the disputation, Pelster cites the works of previous scholars. The disputation, fully developed, is traceable back to the end of the twelfth century, its practice becoming general in the thirteenth.[113] For Oxford and Cambridge the earliest great collection of '*quaestiones disputatae* yet discovered is that contained in our Assisi MS., which affords interesting glimpses into the nature and method of disputation at that time'.[114]

A study of this manuscript shows that the student prepared for his participation in disputations by collecting and knowing a large number of questions, and by learning to defend his solution of the problem and to attack the opponent's solution by raising difficulties against it.

> It was for this reason that in MS. Assisi 158, as in Worcester MS. 99, many disputations are included containing only the reasons *for and against* [sic et non] without the definitive answer of the teacher. Copies of such questions were so much in request because they offered *material for future disputations* in which the compiler had to appear as defender or assailant. Further, the working out of such questions was a good exercise for later disputations.[115]

Thus the student's preparation consisted in the acquisition of as great a repertoire as possible of questions, with as many opinions as possible for and against (sic et non); and it was to his advantage to work out such questions himself in preparation for the time when he would participate in disputations.

When Pelster deals with the disputation itself, except for those particular practices due to local custom, one can see the close correspondence between the Latin disputatio and the Arabic munazara. The essential technical terminology is the same, as can be seen in the following list: the Latin respondens corresponds to the Arabic mujib; the opponens, to the muʿarid; the quaerens, to the sa'il; the quaestiones disputatae, to the masa'il khilafiya; the determinatio, to the taqrir; the collatio, to the mudhakara.

The last mentioned term merits some discussion. Pelster cites a Parisian custom imitated by the Dominicans, in the middle of the thirteenth century, concerning repetitiones and collationes. 'In contrast to the *repetitiones* in which a student repeats the substance of disputations, we have the *collationes*, whose very name implies a conference, a discussion of a theme or problem between several persons.'[116] These two exercises, the repetitio and the collatio, were covered by the one Arabic term, mudhakara, which was applied to students meeting after class to discuss the professor's lecture.[117] It was also applied to a conference, a number of people conferring on a

particular question,[118] and to a disputation.[119]

The same may be said for the description that Kantorowicz gives of the reportatio.[120] The key term, in this regard, is the Latin notare, to note, to take down, describing the function of the reporter, reportator, making his report, reportatio.[121] As described previously,[122] the Arabic verb which corresponds to notare is ʿallaqa, to note, to take down, and the resulting report is called the taʿliqa, or less frequently, the taʿlīq, infinitive noun of the verb, denoting also the activity.

Kantorowicz says that in the reports of Nicolaus on Johannes discovered by Meijers, 'We see that this reporter – and probably many reporters – added the opinion of other jurists or their own solutions of the problem at hand or even contradicted the master.'[123] The recently published work of Ghazzali (the Algazel of the Latin Middle Ages, died 505/1111) entitled *al-Mankhūl*, on legal theory and methodology, is a report, taʿliqa/reportatio, of the teaching of his master al-Juwaini on the subject; it is an example of a disciple who faithfully 'reported' his master's teaching, while also contradicting him in several places and giving his own solutions to problems.[124]

Kantorowicz, in his *Studies*, cites a Latin term, socius, that is of special interest. This term is coupled with a possessive adjective referring to the master. Rofredus refers to his students of law as meis sociis,[125] 'my fellows', in the same way that the 'fellows', or graduate students of a professor of law in Islam, were referred to as 'his fellows', aṣḥābih.[126]

Kantorowicz concentrates, inter alia, on the reportatio, to which he attributes the survival of the disputations on Roman Law in the Middle Ages at Bologna. While working on his book, *Studies in the Glossators of the Roman Law*, he found it necessary to take time out to investigate, for the first time, the type of legal literature called the quaestiones disputatae, 'the existing collections of those questions, their structure, terminology, and style, their historical origins, and their further development'.[127] Kantorowicz says that 'the three oldest collections of *quaestiones disputatae* . . . contain what the glossators would have called by the general name of *reportationes*, and what I propose to call *quaestiones reportatae*'.[128]

Kantorowicz quotes a vivid account of the reportationes, given by Cardinal Pitra:

> A school is open before us. The master is seated at his desk, raises objections and replies to them. Objections go back and forth, numerous, subtle, sometimes with a cutting edge. A disciple, very intelligent, records the session with care, joins in the discussion, and enters his reservations. The master allows the objections to become exhausted, sometimes strengthens them, to draw them closer to the point, then gives the solution, the determination, the sentence.[129]

Before Kantorowicz, J. Warichez, in his *Les Disputationes de Simon de Tournai*, had cited Matthew of Paris in a similar description regarding Simon of Tournai:

> The master is there, seated in his chair [*Simon sedet*]. He directs the discussion, makes up for the lack of erudition, intensifies the debates by citing the *auctoritates* on both sides of the question [=sic et non], raises objections or narrows in on them and finally gives the solution. Sometimes, however, he calls attention to the fact that a subject had already been discussed [*alibi discussum est*], or even interrupts the debates and postpones the solution to another occasion [*alias tractabitur et decidetur*]. During all this time, his favourite student [*prepositus scholarum*], name of Gerard, draws up a report of the session's proceedings.[130]

Warichez then says, 'This report is the text of the Disputes that we are editing today, and which represents neither the preparation of a course nor even an account of the proceedings, but rather a résumé of questions discussed between Simon (of Tournai) and his disciples'.[131]

Kantorowicz dates the development of this type of legal literature, that is, the quaestiones disputatae, to the period of the glossators, 'from the beginning of the twelfth to the middle of the thirteenth century'.[132] After giving a succinct description of the quaestiones disputatae of the Four Doctors, Bulgarus, Martinus, Hugo and Jacobus[133] as being reports their students made of disputations,[134] the author concludes, on the basis of his article, that it was not Irnerius (d.c.1130), the founder of the school of the glossators, but Bulgarus (d.c.1166) who was 'the originator of the *quaestio disputata*'. For Irnerius 'never wrote anything of the kind'. Kantorowicz then goes on to say that this important type of university instruction and literature was transferred from the teaching of Roman law to the teaching of canon law and to that of theology, not the other way around; and that 'Abelard's *Sic et Non* in particular contributed nothing to the legal questions'.

The conclusions arrived at by Kantorowicz, in his *Studies* and in his '*Quaestiones Disputatae*', both published in 1938, are complementary. In his *Studies*, he said:

> The true models of Bulgarus in method and terminology were the classical *quaestiones*, *disputationes* and *responsa* in the Digest, and certain constitutions of Justinian.[135]

and in his '*Quaestiones Disputatae*', he said:

> *What the Four Doctors could not learn from their ancient teachers*, at least not in the form in which their writings were accessible to them in the Digest, *were the medieval ingredients*, *the scholastic-dialectical* and the authoritative positivistic *elements of the quaestio*; *the disputation pro et contra* with the constant reference to the *Corpus* of the law. *No literary source for these elements could be found*; they were probably

simply taken from the pleadings in the courts of law for which these very exercises at the law school were the preparation. Thus the *historical origin of the questions cannot be indicated with one word*: classical, Justinian and *contemporary influences were at work*, but all of them were of a juristic nature.[136]

The significance of Kantorowicz's studies, here very briefly analysed, is that in them he takes us as far back as he could in the search for the origin of the disputed questions, quaestiones disputatae. He rightly points out that the report, reportatio, was due first to legal education, and later was taken up by theology. The account of Simon of Tournai presiding over disputations in his class, while his favourite student took notes of the proceedings, is an example of the theological reportatio. Law was also first in making use of the sic-et-non method. The new elements were developed in the field of law somewhere around the beginning of the twelfth century.

But the second conclusion elaborated by Kantorowicz presents us with a missing link; namely, the origin of the 'medieval ingredients': 'the scholastic-dialectic . . . elements of the quaestio'; 'the disputation *pro et contra*', that is, the sic-et-non method; and 'the contemporary influences that were at work' – all of which, as he rightly puts it, 'were of a juristic nature'.

To my mind, this missing link must be sought in the Islamic khilaf, sic et non, the mas'ala, quaestio, the jadal, dialectica, the taʿliqa, reportatio; briefly, in the medieval ingredients that went to make up the munazara, disputatio, developed by Islamic legal studies.

c. Two Authors of Model Summae: Ibn ʿAqil and St Thomas Aquinas

The obscure nature of the origins of the scholastic method is due to the abrupt appearance of the sic-et-non method in the Christian West towards the end of the eleventh century. There is nothing known in the previous patristic period in the West to explain its existence. Nor can it be explained by Aristotle's aporias, or difficulties, as discussed briefly by him especially in the beginning of Book III of his Metaphysics. For not only was this book not known as yet in the West, the aporias are not of the same nature as the sic-et-non confrontation of conflicting texts.

The scholastic method is both a method of presentation and a way of thought. As a method of presentation, it may be seen in its finished and most perfect form in the *Summa Theologiae* of St Thomas Aquinas.[137] This monumental work on Christian theology and law is structured by the author into Parts (pars), which are divided into Questions (quaestio) that are further divided into Articles (articulus) stated in interrogative form. Each article begins with the formulation of a question, followed by a series of arguments for the negative, each with a number, called objections (objectio); these are followed in

turn by arguments for the affirmative based mainly on Sacred Scripture and the Church Fathers; then comes a solution (solutio, determinatio) to the question formulated at the head of the article. After this solution, a series of numbered replies (responsum) are given, each to its counterpart among the numbered objections.

A question is posed beginning with the word 'whether' (utrum); for instance, 'Whether besides philosophy, any further doctine is required'.[138] An answer is given beginning with 'it seems that' (videtur quod); for instance, '*It seems that* besides philosophical doctrine we have no need of any further knowledge'.[139] This answer is followed by specific points, each with its number. These are the arguments of the adversary. After that comes the 'On the contrary . . .' (Sed contra . . .), which cites a view opposed to the answer given under 'It seems that . . .'. Then comes the thesis of St Thomas with the words, 'I answer that . . .' (Respondeo dicendum . . .). This is the body of the article (corpus articuli) presenting St Thomas's judgment regarding the various views. Then come the replies to the objections listed by number: [Reply] to [objection] one, . . . two, (ad primum, ad secundum), etc.[140]

Thus one view is given first together with its arguments; then a contrary view with its arguments; then St Thomas's thesis which is the body of the article; and finally the replies to the objections refuting all arguments opposed to the thesis. On becoming familiar with the structure of the *Summa*, one usually finds it easier to read first the question in the title of the article, then to go straight to the body of the article for St Thomas's answer and arguments, then to read each of the several numbered objections along with its reply of the same number.

This highly stylized presentation in St Thomas's *Summa* is not to be found in that of Ibn 'Aqil, the *Wāḍiḥ*. Ibn 'Aqil's presentation is closer to the method one would follow in *reading* St Thomas.[141] Furthermore, the whole of the *Summa* of St Thomas follows the stylized presentation without deviation, whereas Ibn 'Aqil applies his particular method of presentation where he has encountered differences of opinion either orally, in actual disputations, or in writing. On the other hand, St Thomas did not always use the stylized method just described; he also wrote discursively as for instance in his *Summa Contra Gentiles*.

At one time Ibn 'Aqil will begin by giving a thesis or a counterthesis. For Ibn 'Aqil the *corpus articuli* comes usually at the head of the article, followed by the objections and the replies to the objections; it is rather the *caput articuli*, never sandwiched in between the objections and their replies. This is the only significant difference in form between the Baghdadian and the Aquinian.

Ibn 'Aqil's thesis is then followed by the arguments for the thesis, then by the objections to these arguments, then by the replies to these

objections, then by the arguments for the counter-thesis, and finally by the refutation of these arguments.

At another time the article or unit of disputation is more elaborate; but it is reducible to the basic schema, namely: (1) thesis and counter-thesis; (2) arguments for the thesis; (3) objections to the arguments; (4) replies to the objections; (5) pseudo-arguments for the counter-thesis; and (6) replies in refutation of these pseudo-arguments.

The Arabic terminology is technical. The word for thesis is madh-hab (pl. madhahib). The arguments for the thesis are adilla (sg. dalil), whereas the arguments for the counter-thesis are called shubah, shubuhat (sg. shubha). The objections to the arguments advanced for the thesis are called as'ila (sg. su'al); a su'al, signifying question, is in this schema also an objection; the replies to the objections are called ajwiba (sg. jawab), which is also the term used for the refutation of the pseudo-arguments, shubah.

Medievalists have seen in the chronology of disputations held by St Thomas the intention of feeding the composition of the *Summa Theologiae* which he was in the process of writing. In passing, he dealt in these disputations with questions of actuality. This calls to mind Ibn 'Aqil's *Kitāb al-Funūn* which played such a role for his own works and in which he recorded disputations that had taken place in his presence. Some of these were regularly held sessions, and others were held on the occasion of the death of a scholar or the inauguration of a professor.

Ibn 'Aqil and St Thomas were professors who put their interest in students first and foremost in their works. In the prologue to their respective works, they both say that they are writing their *Summas* for the instruction of beginners. They both speak of the need for clarity in the presentation which would contrast with the confusion one meets in the works of predecessors. St Thomas wanted to do away with 'the multiplication of useless questions, articles, and arguments',[142] he wanted to present the work according to the order of the subject-matter, not according to the chronology of the various disputations, which was quite arbitrary.[143] By the same token, Ibn 'Aqil aimed for clarity of presentation and facility of expression contrasting with the style of his predecessors, which was obscure and too difficult for beginners to comprehend.[144] He said that this clarification was a departure from the method of the philosophical theologians and obscurantists (Ahl al-kalām wa-dhawī 'l-i'jām), rejoining the method of jurisprudence and the procedures used in the exposition of positive law.[145]

Then Ibn 'Aqil concludes his monumental *Summa* of three volumes with the following statement, which shows that he was perfectly conscious of the scholastic method he was using:

Wa-innamā salaktu fī-hī (=in the *Wāḍiḥ*) tafṣīla 'l-madhāhib,

thumma'l-as'ila, thumma'l-ajwiba 'anhā, thumma'sh-shubuhāt, thumma 'l-ajwiba, ta'līman li-ṭarīqati 'n-nazari li 'l-mubtadi'īn. (In writing this work I followed a method whereby first I presented in logical order the theses, then the arguments, then the objections, then the replies to the objections, then the pseudo-arguments [of the opponents for the counter-theses], then the replies [in rebuttal of these pseudo-arguments] – [all of this] *for the purpose of teaching beginners the method of disputation.*)[146]

This was the schema, the *external* technique or *external* form of the scholastic method. Ibn 'Aqil had also its inner spirit; that is, in the words of Grabmann, 'the use of reason in order to bring the content of faith closer to the spirit of thinking men, describe it as a system and clarify the objections and difficulties'.[147] Such was Ibn 'Aqil's method, as it was that of St Thomas. He also shared with St Thomas a desire for harmony between reason and faith. In *Kitāb al-Funūn*, speaking as usual in the third person, he refers to himself as someone who has devoted himself to the study of the science of the Ancients (meaning Greek philosophy), who delights in the search for the truth while remaining religious and deeply committed to the religious laws of God: insānun yantaḥilu 'ilma 'l-Awā'il, wa-yu'jibuhū 'l-baḥthu 'ani 'l-ḥaqā'iq, wa-huwa mutadaiyin, jaiyidu 'li 'tiqādi fī 'sh-sharā'i'.[148] On another occasion, in an academic sermon, he says that such is the code followed by the intellectuals who cling to their religious beliefs, a group with which he identified: hādhā huwa qānūnu 'l-'uqalā'i 'l-mutamassikīna bi 'l-adyān.[149]

Reason, for Ibn 'Aqil, is the most excellent of God's gifts to man: al-'aqlu afḍalu mā manaḥahu 'Llāhu khalqah.[150] Being God's gift to man, reason's first fruit should be obedience to God, in his commands and prohibitions: thamaratu 'l-'aqli ṭā'atu 'Llāhi fī-mā amaraka bihī wa-nakāk.[151] For a mind which does not bear the fruit of obedience to God, nor justice for one's fellow man, is like an eye that cannot see, an ear that cannot hear: fa-'aqlun lā yuthmiru ṭā'ata 'l-Ḥaqq, wa-lā inṣāfa 'l-khalq, ka-'ainin lā tubṣir, wa udhunin lā tasma'.[152]

This means, of course, that if God gave us reason, then reason and revelation are from the same source, and the two must be in harmony and cannot be in contradiction. '[Right] reason is in agreement with revelation and there is nothing in revelation except that which agrees with [right] reason': inna 'l-'aqla muṭābiqun li 'sh-shar', wa-innahū lā yaridu 'sh-shar'u bi-mā yukhālifu 'l-'aql.[153]

In this next statement Ibn 'Aqil directs his criticism at both the strict rationalists and the strict traditionalists. To the doctors of both tendencies he says, 'Nothing causes intellectuals to err except acts due to hastiness of temper and their being content with the Ancients to the exclusion of the Moderns': mā auqa'a 'sh-shubuha li 'l-'uqalā'i illā 'l-bawādir, wa 'l-qunū'u bi 'l-Awā'ili 'ani 'l-Awākhir.[154] By 'the

Ancients' (al-Awā'il) he meant the pious *salaf* (or Fathers of the Church), the strict traditionalists; by the strict rationalists, he meant the Greek philosophers. Both tendencies he regarded as being backward, for the one repudiates reason, while the other rejects revelation.

He separates men into three categories with regard to reason and revelation. Again, this is how he puts it:

> Ba'ḍu 'l-ḥukamā'i 'l-ilāhīyīna yaqūlūn: 'fī 'l-ḥikmati mā yughnī 'ani 's-sufarā'.' Fa-'aṭṭalū 'sh-sharā'i', wa 'qtana'ū bi-mā tu'addīhim ilaihī 'l-'uqūl, wa-tu'addibuhum bi-hī 'l-albābu wa 'n-nuhā. Wa-ba'ḍu 'l-fuṭanā'i ja'alū 'l-'uqūla musta'badatan li 'sh-shar'. ḥākimatan 'alā amri 'd-dunyā wa-siyāsātihā 'llatī lam yūjad fī-hā naṣṣun min shar'. Wa-ba'ḍu 's-safsāfi 'aṭṭalū 'sh-sharā'i'a ṭalaban li 'r-rāḥati mina 'l-ḥajri wa 't-takalluf, wa-aṭṭalū 'l-'uqūl.
>
> (Some metaphysicians say 'There is in philosophy that which enables us to dispense with prophets'. Thus they have annulled the laws of God and contented themselves with the dictates of their [unaided] reason and the discipline of their intellects. On the other hand, some intelligent people have made reason submissive to the religious law, but use it to pass judgment on matters of worldly concern regarding which there is no provision in the revealed law. And finally there are some contemptible people who have annulled the laws of God in order to deliver themselves from restraint and responsibility, and who have annulled reason as well.)[155]

Ibn 'Aqil belongs to that middle group which distinguishes the place of reason and the place of revelation. In one of the sections of his *Wāḍiḥ* he reinforces this doctrine. This section is entitled: 'That which may be known by reason to the exclusion of scripture, that which may be known only through scripture to the exclusion of reason, and that which may be known by both together': mā yu'lamu bi 'l-'aql dūna 'sh-shar', wa-mā lā yu'lamu illā bi 's-sam'i dūna 'l-aql, wa-mā yaṣuḥḥu an yu'lama bihimā jamī'an.[156]

Like St Thomas, Ibn 'Aqil did not regard himself as a philosopher, for philosophy (falsafa) denied certain revealed truths (e.g., one God, a non-eternal world, the resurrection of the body). He made use of philosophy and had a healthy respect for reason. When young he was persecuted and caused to go into hiding; his persecutors accused him, among other things, of excessive respect for the rationalist Mu'tazilis.[157] Reflecting on this affair in old age, he said without the slightest touch of bitterness, that his companions had misunderstood his intent; he had merely wanted to benefit from the knowledge of all the great professors of his day, including the Mu'tazilis.[158] For Ibn 'Aqil was after the truth, and the Mu'tazilis had tools which he considered to be important for arriving at the truth. It was their methodo-

logy that he wanted to learn; he wanted nothing to do with their doctrines. In search of the truth, he was ready to recognize it and accept it wherever he happened to find it. A jewel in a dung-heap, he once said, is no less a jewel for being there.[159]

It is easy to see how Ibn 'Aqil and St Thomas Aquinas could be considered as two kindred spirits. Like St Thomas, Ibn 'Aqil had a deep and genuine respect for the truth, coupled with the courage to follow it wherever it led him, and a dogged resolve not to be side-tracked. He scandalized his traditionalist Hanbali companions when he declared that he would follow *the evidence*, not the founder of their school, Ahmad b. Hanbal: al-wājibu 'ttibā'u 'd-dalīl, lā 'ttibā'u Aḥmad,[160] explaining that this is what the founder himself had done, and to do so would be to follow him in his true spirit.

Ibn 'Aqil was a Hanbali, who studied under the direction of Mu'tazilis, and who was once claimed by the Ash'aris.[161] But he stood apart from all three groups, a man *sui generis*. He had great sympathy for his own companions, the Hanbalis, whom he never deserted,[162] and respected the knowledge of the Mu'tazilis,[163] but had little or no patience with the Ash'aris, for he saw them as advancing with one foot towards the traditionalists and with another towards the rationalists, confused as to which direction to take.[164]

It was his genuine sympathy for the Hanbalis that taught him respect for revelation, and his genuine respect for the Mu'tazilis that taught him how to appreciate reason, but it was his own genius coupled with the unusual circumstances of his background that showed him how to put each in its proper place and effect a harmony between them. This harmony was altogether different from the sort of harmony that Averroës advocated in his *Faṣl al-maqāl*,[165] where the reader is left without any doubt in his mind about philosophy being first and foremost, above theology and law.

Originally from a Hanafi family, living in a Mu'tazili quarter of Baghdad, Ibn 'Aqil grew up with rationalist Mu'tazilism as part of his family surroundings. At the age of sixteen, he decided in favour of the traditionalist Hanbali school. What makes him unusual is exactly this background of traditionalism and rationalism. To avoid being psychologically split in two, so to speak, he had the choice of choosing one of them, or of renouncing them both, or of reconciling them. He chose to reconcile them, and was able to do so because he had neither the traditionalist's fears and suspicions of Mu'tazili rationalism, nor the Mu'tazili's contempt for traditionalists and the tendency to give primacy to reason above faith. With a healthy respect for the intellectual equipment of the Mu'tazili, and with the deep commitment of the Hanbali for the Scriptures, the Koran and traditions, Ibn 'Aqil embodies the synthesis which made possible a harmony between faith and reason.[166]

d. The Channels of Communication

The channels of communication between East and West were not lacking: Byzantium, Italy, Sicily, and Spain. When treating of the sic-et-non method, Grabmann listed the names of those who used it before Abelard.[167] Two of these have already been cited: Bernold of Constance and Ivo of Chartres. But Grabmann speaks of two others: Gerbert of Aurillac (d.1003) and Photius, the patriarch of Constantinople. In a work attributed to Gerbert, Grabmann saw the beginnings of the method of concordance, the sic-et-non method, that was later to be used by Bernold and Abelard. But there is some question whether this work, entitled *De Corpore et Sanguine Domini*, is correctly attributed to Gerbert.[168]

Turning to the East, Grabmann sees the beginning of this method in the *Amphilochia* (*Quaestiones Amphilochianae*) of Photius, a collection of questions and answers on biblical, dogmatic, philosophic, grammatical and historical problems. In the exegetical parts Photius indicates the rules for reconciling apparent contradictions. He especially points out that one must pay attention to the person making each statement, and to the place and time involved; one must consider the context and, above all, explore the Sacred Scripture from all points of view. These rules are reminiscent of what was later done by Bernold and Abelard.[169]

The biography of Photius shows that he was at one time an ambassador to the court of the caliph al-Mutawakkil. This was in 855, when Photius was about 35 years of age. At the court of al-Mutawakkil he most certainly could have come into contact with khilaf – the sic-et-non method. Muslim scholars held ceremonial disputations at the caliphal court in honour of foreign emissaries in which such emissaries could also participate, especially when they were scholars of the calibre of Photius.

Writings such as those of Photius would have had no trouble arriving in Europe, given the fact of Byzantine interests in Italy. Before the advent of Abelard and his predecessors who used the sic-et-non method, translators had already been active in translating works from Greek to Latin. The quarrel over iconoclasm had brought about a migration of Greek monks to Italy, where they became established in colonies and monasteries. This migration in turn brought about a renewal of Greek scholarly learning in southern Italy and Sicily, which were Greek by tradition. There were close contacts between Constantinople and Italy in the eleventh century, and southern Italy was regarded as part of the Byzantine Empire well into the second half of the eleventh century, before Bari was lost to the Normans.

Greek works were included in gifts sent to Europe as early as the ninth century. The Byzantine Emperor Michael II sent a codex of the

works of the pseudo-Dionysius to Louis the Pious; the translation was carried out under the direction of Hilduin, abbot of Saint-Denis, in the year 835. John Scotus Eriugena revised the translation (860–2). In the eleventh century Alphanus I of Salerno (d.1085) translated the *De natura hominis* of Nemesius of Emessa from Greek into Latin. Several other works were translated in this century and later.[170] The growth of trade and commerce had brought the Venetians and Pisans into contact with Greek scholars and learning at Constantinople.

On the other hand, the sic-et-non method may have come directly to the Latin language from Arabic, through Spain. Toledo, it will be remembered, was reconquered from the Muslims by Alphonse VI in 1085, the year which marked the end of the Great Saljuqs. Soon after this, Toledo became the most important centre of translation from Arabic to Latin, under the patronage of Archbishop Raymond (1126-53). In passing, I will only recall the names of two famous translators: Constantine the African (d.c.1087)[171] and Adelard of Bath (d. after 1142), both of whom were contemporaries of Abelard.

It is true that the Arabic works translated were mostly works on medicine and philosophy. But even if no works on law and theology were translated – and this is by no means certain – the scholastic method may have been transmitted through a work on medicine. For the scholastic method of jurisconsults was put to use in the field of medicine, as, for instance, in the work of Najm ad-Din b. al-Lubudi (d.670/1272): *Tadqīq al-mabāḥith aṭ-ṭibbīya fī taḥqīq al-masā'il al-khilāfīya, 'alā ṭarīq masā'il khilāf al-fuqahā'*.[172] This title was translated into Latin by F. Wüstenfeld as follows: Exploratio accurata disquisitionum medicinalium de quaestionibus controversis vere cognoscendis, ad rationem controversarum Jurisconsultorum instituta.[173] The application of the method of jurisconsults to works on medicine is not at all surprising (and this is by no means the only instance), since many doctors of medicine were also doctors of law.[174]

Peter Abelard himself was not unaware of the Saracens. When he was having his troubles in Paris, he declared that he would like to go and live among them; he felt that the Saracens[175] would receive him all the more favourably since he would be considered as a bad Christian on the basis of the accusations that were being levelled against him.[176]

Thus it would have been quite possible for the sic-et-non method to come to Europe by way of Byzantium or Spain, or from both directions. Sicily and Italy were also active centres of communication. It was only one of many elements that could have travelled, or did indeed travel, along such routes.

4. The Superior Faculties

The nascent universities of the twelfth century differed from the cathedral and monastic schools in two important respects: one organizational in nature, the other, scientific. Organizationally, the

teachers of a university were united into a corporate body, with privileges, protection and autonomy. This aspect has given the university its viability through the centuries down to our day, where nothing has been invented to replace it. As an intellectual centre, it differed from cathedral and monastic schools in that it introduced medicine, law and theology as subjects of scientific study. The liberal arts of the trivium and quadrivium became subordinated to the three new fields. Of the four faculties of the University of Paris, theology, law and medicine were called *superior* because the faculty of arts served as preparatory and introductory to them.[177] Scientific study was made possible mainly by the influx of Arabic books from the Islamic world through Spain,[178] and by the introduction of a new method based on the new logic (logica nova) of Aristotle, introduced into the Latin West in the second half of the twelfth century.

The new studies appeared, in succession: medicine, first, in Salerno, followed by law in Bologna, then theology in Paris. Salerno and Bologna present interesting parallels in medicine and law with Islam.

a. Medicine at Salerno

The first of these three places to produce a university was Bologna, which was soon followed by Paris, both in the second half of the twelfth century. But it was not until the second quarter of the thirteenth century that Salerno received legal recognition from Frederick II, and not until the middle of the fourteenth that it was completely free to grant degrees and medical licences.[179] It was Bologna and Paris, not Salerno, that provided the two models for subsequent universities.

Salerno became famous because of its specialization in one of the new scientific fields, medicine. But it differed from Bologna and Paris in one all-important respect: the scholastic method of disputation did not play in its studies the central role it played in the legal studies of Bologna or the theological studies of Paris. The new studies formed a constitutive element in the rise of universities; but the essential catalytic element in the university movement was the new scholastic method with its sic et non, dialectic and disputation. This method was the formal element that led to the licence to teach, followed by inception into the universitas magistrorum, the guild of masters, the university. Medicine used this method in a spirit of imitation, taken by its popularity, not because of inherent need. It thrived rather on consultation, drawing its strength from results empirically tested; it could not afford to indulge in the time-consuming dialectic of probabilities. Imbued with Greco-Arabic medical and scientific learning, Salerno was deeply affected by the form as well as the content of that legacy; it was more spiritually akin to the loose organization of the Baghdad hospital than to the faculty organization of the European university.

b. Law at Bologna

Bologna and Baghdad present a series of striking parallels; parallels of form and method, and parallel movements, in the field of legal studies. Form and method have been treated in the foregoing pages: the sic et non, the quaestiones disputatae, the reportatio, and the legal dialectic have their earlier Islamic parallels in the khilaf, the masa'il khilafiya, the ta'liqa and the jadal of the jurisconsults. The sic et non, thought at first to have originated with Abelard in his book on theology by that title, has since been shown, thanks to the work of Grabmann, to have been used in law by the canon lawyers, and before them, by the glossators of Roman law, along with the quaestiones disputatae, thanks to the studies of Kantorowicz.

Besides form and method, what further strikes the student of Baghdad and Bologna are a series of phenomena peculiar to the two centres: (1) concentration on legal studies; (2) prominence of legal studies to the detriment of theological studies; (3) banishment of all manner of speculation; and (4) the refuge of speculation in the schools of medicine.

In Baghdad, the triumph of the traditionalists, following the failure of the Inquisition in the early third/ninth century, led to the prominence of legal studies. The masjid, open to all approved studies, began to be founded more frequently for law; then the madrasa was created exclusively for concentration on legal studies to produce jurisconsults, the other fields serving as ancillaries. The energy required for the scholastic study of law left little for other subjects. Professors of law were set apart from all others by a special exclusive designation, mudarris, while shaikh remained the general term applied to all. The course of studies for students of law was divided into two distinct major levels, undergraduate and graduate, for the mutafaqqih and faqih, the latter term being synonymous with mufti, the final product of the madrasa. Legal studies were begun at about the age of fifteen after school education in the maktab and kuttab was over.

Rashdall describes the parallel phenomenon at Bologna:

> If the whole *Corpus Iuris* was to be taught, it required the undivided attention of its students; henceforth the student of law had no leisure for other studies, and the student of arts no longer ventured to meddle with so vast and so technical a subject until mere school-education was over. There may, indeed, have been special schools at which law was taught by distinct teachers at such places as Pavia and Ravenna before the rise of the Bologna school. But from this time [Irnerius and thereafter] the distinction of the teachers and students of law from other teachers and students came to be much more sharply drawn and extended itself to all universities and schools at which law was taught at all.[180]

After the failure of the rationalist Inquisition in Islam, the triumphant traditionalists saw their salvation in the promotion of legal studies, excluding rationalist theology, kalam, from the curriculum. This exclusive character of legal studies took place in Bologna and southern Europe generally. Rashdall describes it:

> From the time when canon law became fully differentiated from theology, no secular studium of theology of any importance existed at Bologna. In the academic organization *a faculty of theology had no place till 1364*. The consequences of this *constitutional peculiarity* were of the highest importance. *From the School of Bologna strictly theological speculation was practically banished*, and with it all the heresy, all the religious thought, all the religious life to which speculation gives rise.[181]

Furthermore, just as speculation in Islam, especially in Baghdad, had found refuge with men of medical science, so also in Italy, as Rashdall points out, speculative thought found refuge with medical men who 'were not as a rule ecclesiastics; and the faculties [of medicine] were quite independent, in so far as any profession was independent, of ecclesiastical authority. The popularity of the Arabic medicine carried with it the popularity of Arabic astrology and Arabic philosophy'.[182] The lawyers at Bologna, like the theologians at Paris, were ecclesiastics. But those of Bologna, in contradistinction to those of Paris, were completely against theology and theological speculation.

These phenomena in Islam find their efficient cause in the Inquisition. The triumph of the traditionalists in that Inquisition brought on the suppression of speculation, and its banishment from the legal movement in Islam. The appearance of these movements in southern Europe does not seem to be due to local causes. Their peculiarity in southern Europe may well be due to their reception as such from Islam, the movements and their concomitants all in a package.

5. Decline of the Literary Arts and Other Phenomena

The classics, according to Paetow, should have developed with everything else in the twelfth century, especially so at Paris which was in close touch with Chartres and Orléans. Paetow continues:

> But this was not to be because that age developed other intellectual interests which crowded out the literary classical studies. All the great intellects were bending their best efforts towards dialectic, scholastic philosophy and theology, or the practical studies of law and medicine.[183]

After pointing out that, at the end of the twelfth and beginning of the thirteenth century, Salerno was known for medicine, Bologna for law, Paris for the arts, and Orléans for its study of the ancient authors, Paetow goes on to say, 'Evidently these men believed that the classics would keep their rank among the prominent pursuits of that day and

that Orléans would be the seat of a university where humanistic studies would occupy the chief place in the curriculum'.[184] Even at Paris the study of ancient authors still flourished towards the end of the twelfth century,[185] and 'about 1200 the study of the classics was still associated with the branches taught at the rising universities. Within the first half of the thirteenth century, however, interest in the classics waned rapidly'.[186] Although Peter Comestor, the Chancellor of Notre Dame of Paris after 1164, preached that the arts were useful because they helped in the study of the Scriptures, he also preached that the figments of poets, like the croaking of frogs, must be avoided.[187]

a. Paetow's Five Causes

Paetow cites five causes for the neglect of the classics in the medieval universities: (1) strict clerical feeling against profane literature; (2) popularity in the schools of good medieval Latin literature; (3) renewed interest in science; (4) rise of the lucrative studies of medicine and law (including the ars dictaminis); (5) increasing popularity of logic which led to scholastic philosophy and theology.[188] Except for the second cause, these others could also be cited, mutatis mutandis, as reasons for Islam concentrating on the religious sciences, especially law.

Paetow's list of causes in explanation of the neglect of the liberal arts in the rising universities may for the most part be cited for Islam, mutatis mutandis, in explanation of the subordination of the literary arts to legal studies in the rising colleges. The causes explain the neglect or subordination; they do not always explain themselves. The increasing popularity of logic may explain the neglect of the liberal arts, but it leaves out the question *why* logic became popular. By logic, Paetow meant dialectic; for he said, further on, 'The most important cause of the decline of the classics and of purely literary pursuits generally, was the rise of dialectics to undisputed eminence among the arts'.[189]

The twelfth century brought with it a distinction between logic and dialectic. The logica nova was introduced to Europe through translations from Arabic works. John of Salisbury emphasizes the importance of Book VIII of the *Topics* of Aristotle on the disputation raising it to the level of a full-fledged art.[190] The Islamic intellectual scene had already practised the sic et non and disputation from its early centuries. It was natural that dialectic should take hold of the imagination of Muslim intellectuals who saw its value for the development of disputation and therefore, for the system of advocacy which could lead to solutions for the pro and con opinions of khilaf. The importance of this method to Islam was most fundamental: the process of Islamic orthodoxy depended on it. I take the liberty to quote a passage where I have already given what I believe to be the reason for it:

Having no councils or synods, Islam had to depend on the principle of *ijmāʿ*, or consensus, to define orthodoxy. And since consensus could be tacit, the doctors of the law, as a matter of conscience, felt obliged to make known their differences of opinion, lest a doctrine which they opposed be considered as having received their tacit acceptance. Since there was no formal organization of *ijmāʿ*, the process worked retroactively. Each generation cast its glance backward to the generations that preceded it to see whether or not a certain doctrine had gained acceptance through consensus; and this was decided by the absence of a dissenting voice among the doctors of the law regarding that doctrine. In time, these differences of opinions were compiled in large tomes, and *khilāf* became an important field of knowledge taught in the schools of law.[191]

Thus the sic et non was basic to Islam. It was in the very nature of Islam to develop it. It was part and parcel of the Islamic process for determining orthodoxy. Christianity could very well not have developed it at all, whereas, without it, Islam could not have remained Islamic.

Islamic interest in dialectic was dictated by its application to khilaf. While Muslim philosophers pursued the philosophy of Aristotle, Muslim jurisconsults, as such, were attracted by dialectic as if by a magnet because of its role in advancing and perfecting the process of ijmaʿ-khilaf, sic et non.

The decline of the literary arts in the West was not to last as long as it did in Islam where the reasons for it were indigenous to Islam. The Renaissance of the fifteenth century brought the classics back to the European scene. On the other hand, in Islam, under the sway of the exclusory religious sciences, the situation of the literary arts was far from having improved. When the literary renaissance, nahda, came to the Arab-Muslim world in the nineteenth century, it was due in great measure to the Lebanese movement led chiefly by the Christian writers, Jibran Khalil Jibran, Mikha'il Nuʿaima, and Amin Rihani, and it drew its strength from European literatures. In the second half of the eighteenth century, the cause of the literary arts had still to be fought in the Muslim world, as evidenced by the plea of Muhammad Amin al-ʿUmari in his *ad-Durr al-manthūr*. This work, finished in 1179/1765, is preserved in the author's original in the Chester Beatty Library in Dublin.[192] His exhortation in favour of the literary arts was given in the following terms:

> It behooves every intellectual to study all of the literary arts, such as syntax, morphology, metrics, verse, and other arts of the Arabic language and rhetoric. *He should not say that the only desideratum is religious knowledge*; for it may often happen that he will be in need of these arts and will therefore regret having neglected them.

> Even if the only advantage to be gained from them be refinement of character and improvement of disposition, that would be ample proof of their eminence and desirability, *especially since through them one may gain access to many of the religious sciences*. . . . Furthermore, even if these arts have disappeared without a trace, their very names fading away because of the disinclination of people to aspire to perfection and their avidity for amassing wealth, the knowledge of these arts nevertheless remains the sine qua non of the intellectual.[193]

b. Ars Dictaminis

The term is derived from the verb dictare, to dictate, to compose, the technical meaning being: to write in a formal style, to compose legal documents. Rashdall speaks of it as 'a rather curious art' called dictamen, which

> may be comprehensively described as the art of composition. It was especially occupied with the art of letter-writing, and included not only rules for private epistolary correspondence, but also more technical rules for the compilation of official briefs or bulls or other legal documents.[194]

Further on, Rashdall says that in the days of Irnerius (d.c.1100),

> *dictamen* was still a prominent element in a legal education, and *dictamen* included *the art of literary composition as well as the technical art of the notary*.[195]

Rashdall cites the *Rationes dictandi* of the Bolognese Canon Hugo (c.1123) as the earliest known work in the field of dictamen. He rejects Sarti's assertion that Irnerius had written 'a notarial form-book'.[196]

A. B. Emden, one of the editors of Rashdall's work, points out that

> the *ars dictandi* acquired . . . great importance in the twelfth and thirteenth centuries as a preparation for the political position acquired by many jurists and notaries, i.e., as a training for public life, the composition of state papers and manifestos (*these involved the use of the* cursus *or rhythmical prose according to fixed rules*) and public speaking.[197]

Ars dictaminis, or dictamen, or ars dictandi, including the art of the notary, ars notaria, developed in connection with law quite early in the history of Islamic law. It was designated under more than one name: ʿilm ash-shurut,[198] ʿilm ash-shurut wa'l-watha'iq, ʿilm ash-shurut wa's-sukuk,[199] ʿilm ash-shurut wa's-sijillat,[200] sinaʿat at-tauthiq,[201] etc., the various names being used in an attempt to designate the variety of formal documents: contracts, deeds, legal instruments, registers, records, etc., and the designation sinaʿat at-tauthiq designating the notariate, or art of the notary.

Under the designation ʿilm ash-shurut wa 'l-sijillat, which means 'the science of composing legal instruments and keeping registers',

Hajji Khalifa defined this field in the following terms:

> It is a science which seeks ways of documenting, in books and registers, decisions established in the presence of the qadi, in such a way that they may be adduced as evidence when the witnesses to the actual transaction have died. The subject matter of this science are those decisions with respect to their documentation. Some of its principles are taken from the law (fiqh), some from the art of composition (insha'), and some from legal instruments (rusum), custom ('adat), and discretionary legal decisions (umur istihsaniyya). It is a branch of positive law (furu' al-fiqh) by reason of the fact that its concepts are arrived at in conformity with the rules of the divinely revealed law (shar'). It may also be regarded as a branch of the literary arts from the standpoint of embellishing the wording (of the documents).[202]

According to 'Abd al-Qahir al-Baghdadi (d.429/1038), it was the Prophet himself who was 'the first to dictate (amlā) the documents of the treaties and contracts . . . in the handwriting of 'Ali b. Abi Talib', his son-in-law.[203] This statement was made in refutation of Muhammad b. Yahya al-Jurjani (d.397/1007) who declared this art to have been originated by the eponym of the Hanafi school of law, Abu Hanifa.[204] In any case, the field in question developed in Islam long before its appearance in the Latin West.[205] The art of epistolary composition, 'ilm at-tarassul, with its predilection for rhymed prose, saj', and the art of the notary and dictamen, 'ilm ash-shurut, were both derived from insha', the art of composition, as applied by Muslim jurisconsults.

H. Wieruszowski, in her study on Arezzo as a centre for the ars dictaminis says that

> The professional importance of *ars dictaminis*, as implemented in the academic curriculum, was also recognized by municipal and guild authorities when it became an established policy of the magistrates to examine a candidate for admission to the guild of notaries as to his ability in *ars dictaminis*. This regulation was introduced by the guild of notaries of Bologna in 1246 and accepted by guilds of the same craft elsewhere. It made *ars dictaminis* into the basic training course for the future members of the notarial profession.[206]

In this regard, the shuhud-notaries in Islam were both notaries and professional witnesses who were sworn in by the magistrates, qadis. They had to have completed their legal studies and were versed in the art of composing legal documents.

H. Wieroszowski points out that 'the marriage between law and letters', characterizing such men as Piero della Vigna and the notary-schoolmasters of the type of Bonfiglio and Mino, was later continued under the early generations of humanists, many of whom were both

jurists and notaries.[207] Piero della Vigna is said to have been the chancellor of Emperor Frederick II,[208] whose court included Arab scholars and who studied dialectic with the Sicilian Muslim scholar Ibn al-Jauzi as-Siqilli, the Sicilian.

c. Peter of Helias and Grammar

1) Grammar in Verse

Paetow makes a most interesting statement concerning grammar and dialectic. Paetow, like Rashdall (who found dictamen to be 'a rather *curious* art'), found something curious about the way in which medieval Latin grammar was written:

> A somewhat curious new element was the verse form in which grammars were now written. A veritable craze for versifying prevailed during the twelfth and thirteenth centuries. *No doubt it would be as difficult to explain this phenomenon as it would be to state just why dialectic became so very popular in the same period.* Whatever may have been the causes therefore, it is known that almost every species of literary production occasionally appeared in verse . . . Sermons were sometimes thrown into poetical form or rhythmical prose . . . As early as 1150, Peter Helias, a teacher at Paris, wrote a brief summary of Latin grammar in hexameters.[209]

Both rhymed prose, saj', and versification were commonly used in Islamic sermons, exhortations, and professions of faith, as well as in grammar and other fields. The jurisconsults used it so frequently that in order to distinguish it from the poetry of poets, it was called the poetry of jurisconsults, or lawyers' verse, shi'r al-fuqahā'.[210] Grammars in verse were common. A very famous grammar of Ibn Malik (d.672/1274) was composed in one thousand verses, whence its title *Alfīyat Ibn Mālik*. But much earlier than this work was that of the famous grammarian and writer, al-Hariri (d.516/1122), author of the *Assemblies*, *Maqāmāt*, in rhymed prose, who composed a grammar in verse, the *Mulḥat al-i'rāb*.[211]

2) Government in Grammar

Besides composing a summary of Latin grammar in verse, recalling a genre common in Arabic literature, Peter of Helias is again found, among others, in another parallel involving Arabic grammar. Charles Thurot, in his study of medieval grammatical principles, devotes a chapter to the concept of the regime, government. He cites Hugh of St Victor, Abelard and Peter of Helias, who make common usage of the expression regere, to govern. He cites Peter particularly, saying that 'one can see from Peter of Helias that, in his days, [government] was believed to be a *new* doctrine'. He then quotes the following statement of Peter:

> Ubi grammatici huius temporis dicunt 'dictio regit dictionem', ibi Pricianus dicit 'dictio exigit dictionem . . .'.
>
> (Whenever grammarians of this day say 'a word *governs* a word',

there Prician says 'a word *requires* a word . . .'.[212]

Thurot goes on to say: 'In the sentence *Virgilium vivere bonum est*' (It is a good thing that Virgil lives), *Virgilium* is *governed* in the accusative by *vivere*. The reason for this is that the infinitive *requires* the accusative by reason of its power as an infinitive verb, '*ex vi infinitivi*'.

Thurot further quotes Alexander of Villedieu as saying that in the sentence '*doceo pueros grammaticam*' (I am teaching the boys grammar), *pueros* is *governed* in the accusative *per vim transitionis*, by reason of the power of transitivity, and *grammaticam*, by the *vis propria verbi*, by the verb's own power.[213]

The concept of regimen, or government, is one of the basic grammatical concepts in Arabic syntax. It is defined as 'mā bihī yataqauwamu 'l-ma'nā 'l-muqtaḍā li 'l-i'rāb' (that through which the force required for the inflection of words is made available). The earliest grammar of Arabic, the *Kitāb* of Sibawaih, speaks of the regent at the beginning of the first of its two volumes.[214] All inflections of words are made by virtue of a force governing the word inflected. The technical terminology embodies the concept of government. The governing word is called 'amil (governor, the governing word), pl. 'awamil; the word governed is called ma'mul, or ma'mul al-'amil (the word governed by the governing word); the verb 'amila (with the preposition fī) means to govern a word syntactically; and the infinitive noun 'amal means government. The verbs sāra and ḍarabtu, in the following sentences, are regents governing the words after them in the nominative and accusative, respectively: sāra Zaidun (Zaid went forth), ḍarabtu Zaidan (I struck Zaid). The first verb is the regent governing *Zaidun* in the nominative as its agent, by reason of its verbal force; the second verb is the regent governing *Zaidan* in the accusative, by reason of its transitivity. And so on. All words are considered to be in the nominative case, until they are forced into another inflection by reason of the power of an intervening governing word, the regent. The regent may even be abstract. For instance, in the sentence, *Zaidun sa'īdun* (Zaid is happy), the word *Zaidun*, without any apparent intervening regent, is nevertheless governed in the nominative by reason of the power of an abstract regent, namely ibtida', inchoation. Thus a noun beginning a sentence is governed in the nominative by reason of the power of inchoation making it the inchoative (mubtada') of the sentence. Such is the case except, for instance, where the word is a prepositive direct object; as such, it would be governed in the accusative by reason of the power of transitivity (at-ta'addi) of the post-positive verb: Zaidan ḍarabtu, (it is) Zaid I struck (with emphasis on *Zaid*).

Al-Jurjani (d.471/1078) wrote a book completely devoted to government in Arabic grammar; he entitled it *al-'Awāmil al-mi'a, The One Hundred Regents*.[215]

The change in terminology from Prician's classical Latin 'exigit' to Peter of Helias's medieval Latin 'regit' is not a great change, it is only a nuance; but the nuance is, to my mind, a significant one. Why the nuance at all? Why should the nuance correspond to a basic concept peculiar to Arabic syntax? The term 'exigit' is so much like 'regit' that there does not seem to be any reason for changing it, unless the concept of 'government', by the time of Peter of Helias (d.c.1150), Hugh of St Victor (d.1141) and Abelard (d.1142), had become a familiar one through the study of Arabic grammar, by such scholars as the translators of Arabic to Latin.

IV. THE SCHOLASTIC COMMUNITY

1. The Professor and the Licence to Teach

The madrasa and the university in the Middle Ages had this in common: that they both had titular professors who had acceded to the professorship after having been duly licensed to teach. In Islam, the licence first appeared as an authorization primarily *to transmit* hadith. The term ijaza meant licence, authorization, permission; its synonym, idhn, was used less frequently. The ijaza to transmit hadith included the authorization permitting others to do the same: authority and authorization were both transmissible.

Next to the licence to transmit hadith, two other types of licences developed: first, the licence *to issue legal opinions*, al-ijaza *li'l-ifta'*; and later, with the advent of legal studies in the endowed colleges of law, the masjid and the madrasa, the licence *to teach law*, al-ijaza *li 't-tadris*. These two functions were also combined into the licence *to teach law and issue legal opinions*, al-ijaza *li 't-tadris wa 'l-ifta'*. The licence for one of these functions usually implied a licence for the other.

With the development of fiqh, jurisprudence, the licence was no longer primarily *to preserve* hadith for posterity; it developed further into a licence *to instruct, to teach*. Mere transmission did not require the carrier to understand what he was transmitting; his function was to help in the process of preservation; others in the community would provide the necessary understanding. This function was alluded to in the hadith, 'Many a carrier of knowledge is there who carries it to another more understanding than he' (rubba ḥāmili fiqhin ilā man huwa afqahu minh). The primary concern here was the preservation of the Prophet's sunna. Fiqh, on the other hand, literally meant *understanding*. It involved the teaching of the substance of what was being transmitted. It also involved the teaching of a method of research (ijtihad) leading to a legal opinion (fatwa) in response to a question (su'al, mas'ala) on some point of law.[216] In actual chronology, the term ifta', the issuing of legal opinions, is earlier than that of tadris, the institutionalization of the teaching of law, legal theory and methodology. It was the need for jurisconsults, muftis, that led to the

institutionalization of tadris, first in the mosque-college, masjid, then in the madrasa, the Muslim institution of learning par excellence.

The ijaza, the original licence, derived its authority from the Prophet. His Companions (sahib, pl. ashab, sahaba: fellows, associates) were the first to transmit his teachings to posterity. They transmitted the hadiths, vehicles of the statements, deeds, or tacit approvals of the Prophet, to their Successors (tabi', pl. tabi'un), and they to those coming after them, and so on, from one generation to the next. So that a muhaddith, in authorizing a person to transmit a hadith, did so by that authority conferred upon him by his predecessor, the authority being traced back to the Prophet himself, whose authority comes from God. The Koran is held to be God's own speech, and in it His Messenger Muhammad was ordered to recite: 'iqra'!', imperative of the verb *qara'a* – the first basic term of Islamic education.

The licence to teach law and legal methodology, and to issue legal opinions, conferred upon the candidate authority based on his competence in law and legal methodology. This authority and competence resided in the 'alim (pl. 'ulama'), the learned man of religion, specifically in the jurisconsult, faqih. When the master-jurisconsult, the mudarris, granted the licence to teach law and issue legal opinions, he acted in his capacity as the legitimate and competent authority in the field of law. When he granted the licence to the candidate he did so in his own name, acting as an individual, not as part of a group of master-jurisconsults acting as a faculty; for there was no faculty. Throughout its history down to modern times, the ijaza remained a personal act of authorization, from the authorizing 'alim to the newly authorized one. The sovereign power had no part in the process: neither caliph, nor sultan, nor amir, nor wazir, nor qadi, nor anyone else, could grant such a licence. There being no church in Islam, no ecclesiastical hierarchy, no university, that is to say, no guild of masters, no one but the individual master-jurisconsult granted the licence. No one could legally force him to do so, or to refrain from doing so. The line of religious authority rested, not with sovereign power, but rather with the religious scholars, the ulama. Moreover, the institutions in which the ulama taught were creations completely independent of the sovereign as such, and in no need of his sanction to come into existence. Indeed the sovereign had no say in the matter of the licence even when he was the founder of the institution. Islamic education, like Islamic law, is basically individualistic, personalist.

The licence was issued after an oral examination satisfying the examining scholar as to the competence of the candidate. At first a simple process, the examination developed into a sophisticated disputation in which the candidate for the licence defended a thesis or series of theses. When the candidate had proved his proficiency in

disputation he was given the licence (ijaza) to teach law (tadris) and issue legal opinions (ifta'). The origin and development of this licence follows a line running parallel to that of the development of the science of fiqh from the science of hadith.

As a licence to teach, the ijaza developed in Islam at least as early as the fourth / tenth century. Some two centuries later, in the second half of the twelfth century, it made its appearance in the Latin West. As a technical term, it appeared in a decretal of Pope Alexander III (pontificate: 1159 to 1181).[217] It was a licence to teach, a licentia docendi, the same as the ijaza li't-tadris. Education in antiquity, whether in Greece or Rome, did not produce the licence to teach. Nor was the licence produced by Eastern Christian Byzantine education, which was a direct continuation of classical education. Nor was it produced by Western Christian Latin education, whether in the monastic, episcopal or presbyterial schools.[218] It first appeared in the Christian West in the second half of the twelfth century, as one of a number of institutions without indigenous antecedents.

The case of Abelard, who died in the first half of the twelfth century (in 1142), is instructive in this regard. The accusation brought against his teaching was not because he taught without a licence. Rather he was accused: (1) for taking it upon himself to teach publicly a book that had not been approved by the Pope or the Church; and (2) for teaching without having studied under a master (sine magistro); his crime being that he began teaching when he had studied with Anselm of Laon for only a very short period of time.[219] There being no licentia docendi at the time, the conditions for teaching were (1) that one should have studied for a number of years under a master, the latter giving his disciple the nod when he considered him ready to teach; (2) that the candidate should be a moral person (Abelard lost his chair following accusations against his morals); and (3) that he be orthodox. Abelard was enjoined by his master Anselm from commenting on Ezechiel in his place (in loco magistri sui). The master did not want to be held responsible for the errors that the novice could commit in commenting the Scriptures. Abelard was condemned at the Council of Sens, after which he was prohibited from teaching.[220]

The difference between the ijaza li 't-tadris and its later parallel, the licentia docendi, was not in the licence or authorization itself, but rather in the granting authority.

The authorization to teach, as it came to be known in the Middle Ages, whether in Islam or in Western Christendom, derived its legitimacy from two sources: (1) authority based on recognized *competence* in the field of knowledge involved; and (2) authority based on a recognized *right* to grant authorization to teach.

In the West, the first authority was claimed by the masters of the university to be their right; the second came to belong to the pope, the

emperor or king. In the two model universities, Bologna and Paris, two different traditions were at work in the making of the licentia docendi. Each institution began with one of the two cited authorities, later followed by the other type; and the tradition of Bologna was the reverse of that of Paris.

In Paris, it was the chancellor who controlled the granting of the licence; and when the master had obtained his licence he was formally initiated into the corporation of masters in a ceremony called the inception.[221] In the first few decades of the emergence of the university the chancellor 'could grant or refuse the licence at his own discretion in the first instance: he could deprive a master of his licence . . . (and) he could enforce his judgments by excommunication'.[222] Later, the qualified teacher was given the right to a licence, and the control of the chancellor and the corresponding right of the teacher to a licence formed the basis of the Parisian system.[223] The part played by the corporation of masters was that a licensed teacher had still to 'incept', otherwise he was not admitted into the corporation, the *universitas magistrorum*.[224] Up to the end of the thirteenth century the struggle continued between the masters, on the one hand, and the chancellor, on the other.

In Bologna, however, ecclesiastical control did not become established until the end of the second decade of the thirteenth. Previous to that, according to Rashdall, 'Irnerius and his contemporaries, so far as we know, were private and unauthorized teachers; neither they nor their scholars belonged to any institution or enjoyed any legal privilege whatever'.[225] Rashdall goes on to say that 'in the days of Irnerius the teaching office could (so far as can be gathered) be assumed by anyone who could get pupils; he required no licence or permission from any authority whatever, ecclesiastical, civil, or academical'.[226] Rashdall further points out that the masters conducted the examinations at Bologna, and conferred in their own name the licence to teach, in contrast to the Parisian system:

> This unfettered liberty of the doctors was, however, out of harmony with hierarchical ideas: it was contrary to the general principle of canon law which claimed for the Church a certain control over education; and it was contrary to the analogy of the schools north of the Alps, particularly of the great university of Paris, where the *licentia docendi* had always been obtained from the chancellor of the cathedral church. Accordingly, in 1219 Honorius III, himself a former Archdeacon of Bologna, enjoined that no promotion to the doctorate should take place without the consent of the Archdeacon of Bologna . . . Graduation ceased to imply the mere admission into a private society of teachers, and bestowed a definite legal status in the eyes of Church and State alike . . . By the assimilation of the degree-system in the two great

schools of Europe, an archetypal organization was established which supplied a norm for all younger universities.[227]

It was not too long before the practice became universal. In the meantime, the two sources of authority were not always involved together. During the dispersion of 1229, masters seceding from Paris went elsewhere to teach, far removed from ecclesiastical intervention. Many went to the cathedral schools, such as Toulouse, Orléans, Reims and Angers. At Angers, where they pursued their teaching without interference, they granted licences on their own authority, without the sanction of either bishop or chancellor. These licences were later validated by papal bull.[228]

At Oxford, between 1184 and 1214, that is, between the time when the *studium* was in full working order and the date of the chancellor's appointment, a period of three decades, the masters of Oxford may well have 'conducted the inceptions of the new masters on their own responsibility' as did the Parisian masters who seceded to Angers.[229]

In the south of France, Guillam VIII, lord of Montpellier, issued a proclamation in 1181 allowing all medical men who wished to teach medicine at Montpellier to do so freely, which suggests that 'neither masters nor bishops possessed – or at least possessed undisputedly – the right of granting or refusing the *licentia docendi*'.[230] In Maguelone, the bishop reserved to himself the right of conferring the licence.[231] At the University of Naples, the licence was issued in the name of the King.[232] As King of Sicily, Emperor Frederic II forbade the practice and teaching of medicine without the Royal Licence. The masters of Salerno and certain royal officers administered the qualifying examination.[233]

The regulation of the licence to teach was the work of the popes: Alexander III's decretal Quanto Gallicano, the Third Lateran Council in 1179, the instructions of Honorius III to the Archdeacon of Bologna, and papal authority empowering the masters to give their sanction to the grant of the licence.[234]

The ijaza li't-tadris and the licentia docendi were both licences to teach; they were teachers' certificates.[235] Both licences were based on religious authority. In Islam, that authority was passed on from individual to individual. In the Christian West, it was granted eventually by two sources: by the ecclesiastical hierarchy only, as in Paris; or by the masters alone, acting as a guild or corporation, as at Bologna. Finally, the two sources of authority were combined, thanks to the work of the popes. Islam had neither the ecclesiastical hierarchy, nor the corporation; for this reason, the connection between the Islamic ijaza li't-tadris and the licentia docendi remained obscure, and claims regarding the influence of the former on the latter remained unconvincing.

Attention was drawn to the possibility of such influence by Western

scholars of the Islamic system of education in the nineteenth century. Daniel Haneberg, in his work on Islamic education, published in Munich in 1850, makes the following statement regarding the ijaza: 'I suppose that our licentiate stems from this Muslim institution' meaning the ijaza (Ich vermute, dass unser Licentiat von dieser Muhammedanischen Einrichtung herstammt.)[236]

In the last decade of the nineteenth century, Julian Ribera y Tarragó gave a course on Muslim education at the University of Saragoza, during the academic year of 1893–4, in which he expressed the opinion that the Muslim system of education may well have influenced the university in the Latin West. He based his opinion on the study of certain phenomena, among them the granting of degrees or titles, a custom which had not existed previously in the West, whether in medieval Christendom, or in Rome or Greece. In 1893, Gabriel Compayré published a book from which Ribera quoted a statement and commented on it. Compayré wrote that 'the universities sprang from a spontaneous movement of the human mind'.[237] Ribera commented that this was 'a very pretty statement for one who can find any sense in it' (Frase muy bonita para quien pueda encontrarle sentido).[238]

Frederick Maurice Powicke, the late Regius Professor of Modern History of Oxford, after summarizing Ribera's argument, refers the reader to Ribera's treatment of the ijaza in a subsequent section of the monograph, and concludes that Ribera's 'argument is not convincing'.[239]

The argument made no progress beyond this point. The reason for this lack of progress is probably due to Islamists who dealt with the ijaza mostly as a licence *to transmit* hadith, rather than as a licence *to teach* law.[240] On the other hand, Latinist medievalists, in dealing with the licentia docendi, placed too much emphasis perhaps on the granting authority. When one compares that authority in the West – originating as it did eventually from both the corporation of masters (Bologna), as well as from the ecclesiastical hierarchy (Paris) – with the granting authority in Islam, which originated with the individual master-jurisconsult alone, completely independent of sovereign power, and had nothing to do with either a corporation of masters or an ecclesiastical hierarchy, both non-existent in Islam – when such a comparison is made, the argument in favour of influence must indeed appear unconvincing.

The two constitutive elements of the licence, whether in Islam or in Christendom, were, as previously mentioned, (1) authority to teach and (2) competence. In the two systems of education, the granting authorities differed from one another superficially; but, in both systems, the process leading to the recipient's qualification for the licence was the same.

The granting authority in both systems was basically religious. In Islam, religious authority resided in the individual religious master-jurisconsult. He was the counterpart of the religious representative, the chancellor, in Paris, as well as of the 'secular' master or doctor of the law in Bologna. As previously mentioned, the 'heirs' of the Prophet were the individual learned men, not a religious hierarchy. The caliph was not the equivalent of the pope. The magisterium, the teaching authority, resided in the pope together with the councils and synods; in the case of Islam the authority resided in the ulama, specifically in the master-jurisconsults whose opinions went to make up the consensus, ijma'.

If the matter of authority offers some difficulty, albeit superficial, that of competence, leading to qualification for the licence to teach, presents a very clear picture. The steps leading the Muslim candidate to the ijaza li't-tadris have already been described; those of the Christian candidate leading him to the licentia docendi are too well known to require lengthy elaboration.[241] From initial training in the literary arts, to embarking on the long course of study leading to the mastership, passing through the ranks of scholar (mutafaqqih) and fellow (faqih), representing the undergraduate and graduate levels, assisting the master as ordinary repetitor (mu'id) or extraordinary docent (mufid), including the work of building up repertories of disputed questions (masa'il khilafiya, quaestiones disputatae), the student practice of quizzing one another (mudhakara, collatio), disputing for practice with fellow students, or with masters in class (munazara, disputatio), disputation based on the confrontation of conflicting opinions (khilaf, sic et non), and the mastery of dialectic (jadal, dialectica), and finally obtaining the licence to teach (ijaza li't-tadris, licentia docendi), and incepting by giving the inaugural lesson or lecture (dars iftitahi, inceptio); these stages of development are so identical in nature and so well documented in the sources as to remove the likelihood of parallel development due to mere chance. The development in Islam took place more than a century before any part of it began in the Christian West; and the technical terms involved convey the same content and are, in most cases, exact translations of their Arabic antecedents.

2. Mufti, Magister and Magisterium

In the previous section the Islamic licence to teach was described as including the licence to issue legal opinions, al-ijaza li't-tadris wa 'l-ifta'. The term ifta' means the issuing of a fatwa, a legal opinion. The jurisconsult, faqih, issuing such an opinion does so in his capacity as a mufti. The person soliciting the fatwa is referred to as the mustafti. The mufti is called upon to exert himself to the utmost in the study of the Sacred Scripture, the Koran and hadith, and in researching the sources of the law, in order to arrive at his legal opinion. This exertion

is called ijtihad, and the jurisconsult who so exerts himself is called mujtahid. His opinion (fatwa) is a response (jawab) to a question (su'al, mas'ala) put to him by a Muslim layman ('ammi) on a point of law. Muslim law, fiqh, encompasses both the religious, 'ibadat (religious worship), as well as the civil, mu'amalat (transactions), aspects of Muslim life.[242]

A mujtahid practises his ijtihad freely, answerable to God alone. A hadith attributed to the Prophet encourages him to do so by declaring him musib, no matter what his opinion might be. The term musib, in reference to an arrow, means one that hits the mark; in reference to an opinion, one that is right. All legal opinions share this same quality of being 'right', for being the result of the religiously exerted effort, ijtihad, of the jurisconsult. The jurisconsult is rewarded in the world to come, even if he is eventually proven to have been mistaken. If, on the other hand, his opinion eventually proved to be a correct one, he is doubly rewarded. Right or wrong, he is certain of his reward. Islam's insistence on rewarding the jurisconsult in the Hereafter, regardless of the result, dramatized the importance of this supreme function of the jurisconsult, and put a precious premium on the exercise of ijtihad.

The freedom of the mufti in arriving at his personal opinion is matched by the freedom of the mustafti in following the opinion of his choice; for he may solicit as many opinions as he wishes, and may follow whichever he chooses.

All legal opinions per se are valid in the eyes of the law and constitute the substance from which Islamic doctrine is derived through the principle of consensus. Opinions which eventually emerge unopposed from the generation in which they were made public, gain the consensus of the community; opinions that emerge defeated fall by the wayside. On the other hand, conflicting opinions that stand out equally strong and do not succeed in dislodging their opposites, may be followed according to the individual's choice.

The professor of law professed his course of law as head of the college, its only titular professor. He was free to leave that college in favour of another, free to move from membership in a madhab and join another, free to develop his own methodology of law and teach it. His freedom was matched by the student's freedom to study with the professor of his choice, his freedom to leave one college in favour of a scholarship or fellowship in another, his freedom to change his membership in one madhab to join another.

Early in the development of colleges of law the professor taught the law according to one madhab, that represented by the college. Gradually, two or more madhabs within one architectural complex benefited from one waqf, with as many professors of law as there were madhabs represented. Eventually it developed that one professor of

law could teach according to two or more madhabs, but the student bodies were not mixed; the professor moved from one student body to another as he taught the law according to the madhab represented by the student body concerned.

Both the freedom to teach and the freedom to learn were freedoms within the context of Islam. The teaching authority, the magisterium, resided in the ulama whose opinions eventually went to make up the consensus on orthodoxy in Islam. They were those who had the responsibility of teaching and defending the faith: teaching the word of God and defending the faith against heresy. Heresy was that which went counter to the consensus of the community of doctors of the law, members of that community called the 'People of the Prophet's Sunna and His Community's Consensus' (Ahl as-Sunna wa'l-jama'a).

It was the consensus of the ulama as doctors of the law, the master-jurisconsults, that, in the final analysis, passed judgment on whether a religious doctrine was true or false, orthodox or heretical. This teaching authority, this magisterium, belonged to these ulama, not to the sovereign power, whether caliph, sultan, or any members of the governing power. When the sovereign power began to hire its own muftis, their action constituted interference with the free, unfettered character of the magisterium. The Muslim community of doctors considered the opinions of each mufti to be, at best, just so many opinions to be considered on an equal footing with those of the other 'free' muftis; at worst, their opinions were considered suspect and representing the interests of the central power, rather than the Muslim community as a whole.

Various degrees of authority were attributed to the doctrines themselves, according as they were based on the explicit texts of the Koran, on sound hadith universally considered as authentic, on opinions of the doctors in accordance with their reputations, recognized on the basis of their leadership, riyasa, as master-jurisconsults, their success in defending their opinions and defeating those of their opponents.

Before an opinion received the imprint of consensus and became doctrine, the arguments for and against it were considered and debated. The habit of examining the pros and cons of a question inculcated a sense of freedom in the minds of jurisconsults, freedom to treat any question whatsoever. When in the eyes of the community of doctors a disputant went too far, that is, so far as to spill over into heresy, even then he was not condemned until he was given a chance to see his error and recant (tauba). But short of apostasy, to exact the capital punishment from one persisting in his heresy, called for the cooperation of the sovereign political power. On the other hand, whether for apostasy or heresy, the sovereign power had to have the concurring opinions of the majority of recognized master-jurisconsults to exact the ultimate penalty.

There is an interesting parallel to be drawn between the position held by the ulama in Baghdad, for instance, cultural centre of the medieval Muslim world, and the Faculty of Theology of the University of Paris in France, 'eldest daughter of the Church' (fille aînée de l'Eglise). In Islam, where there is no Church, no ecclesiastical hierarchy, no councils or synods for the purpose of defining orthodoxy, it is understandable that such a mechanism as the consensus, ijma', should be developed in order to perform this function, and that the magisterium should reside in the doctors of the religious law. That a similar role, on the other hand, should devolve upon the doctors of theology in Paris is not quite so understandable.

Charles Thurot, in his study on the organization of teaching in the University of Paris in the Middle Ages, describes the position held by the Faculty of Theology vis-à-vis the bishop and pope:

> the Faculty of Theology assumed the power of passing final judgment on whether a religious doctrine was true or false, orthodox or heretical. The bishop and in the last resort the Pope could only exercise judicial and coercive power; they simply applied the punishment. Indeed it was necessary to give a theological reason for the condemnation; and this was impossible without having recourse to the science of theology, that is to say, to its depositaries, the doctors of theology. Accordingly, the pope himself could not pass final judgment in matters of dogma. Such was the system upheld by Peter of Ailly, in 1387, before Pope Clement VII. According to these principles, the Faculty of Theology had functions analogous to those of the jury in our Assize Courts, and the episcopal and pontifical power was like the tribunal.[243]

This situation being a curious development in the Christian world, Thurot goes on to explain:

> These pretensions were not illusory. Composed of regulars of all the orders and of seculars from all the nations, the Faculty of Theology of the University of Paris included, at the time, all that Christendom had as eminent theologians. And in the fourteenth century, the University was, so to speak, the only one. No other university was composed of more members and of more distinguished doctors. All the nations were admitted to the Sorbonne; all the religious orders were represented in Paris by the elite of their Brethren. It looked as though there could not be found anywhere else a more impartial and more enlightened tribunal.[244]

But such a tribunal had no roots in the Christian past, or in the organizational make-up of the Church. Councils and conciliar practice date from the first centuries of Christianity. The bishops and the pope formed the councils which decided and still decide as a tribunal

of last resort on matters of dogma.

The situation in fourteenth-century Paris shows the doctors of the Faculty of Theology relating to bishop and pope in the same way as the doctors of Islamic religious law related to the caliph and those to whom he delegated power. The doctors of Islam gave the juridico-theological reasons, and the sovereign power applied the penalty in matters involving dogma.

Islam defined its orthodoxy through the consensus of its doctors, a process heavily dependent on the scholastic method of disputation developed in its colleges of law. In Christianity, neither the scholastic method nor the consensus of doctors was needed to arrive at orthodoxy. The councils were there to do the job. But since the scholastic method, with its sic et non, dialectic and disputation, had been adopted by the medieval university in the West, Christianity, it appears, came to place great importance on the consensus of doctors at a certain point of its medieval history. But because they were extraneous to the Church's internal development, a non-essential appendage duplicating the work of the formally organized Church councils, both the scholastic method and the consensus of doctors enjoyed but a brief interlude in the history of Western institutions.

CONCLUSION

Muslim institutionalized education was religious, privately organized, and open to all Muslims who sought it. It was based on the waqf, or charitable trust. It was in essence privately supported. A private individual, the founder, instituted as waqf his own privately owned property for a public purpose, that of educating a segment of Muslim society, which he chose, in one or more of the religious sciences and their ancillaries. He created his foundation by an act of his own free will, without interference from any authority or power. Even when the founder was caliph or sultan, or other highly-placed functionary, he created his institution in his capacity as a private individual. Education was directed toward religious ends: the salvation and eternal happiness of men and the glory of God. It was directed towards the establishment of God's government on earth. The society at which it aimed was one with God as its leader; the culture it aimed at developing was one inspired by the sacred scriptures.

In the pursuit of truth and its dissemination it insisted on ijtihad, encouraging the individual effort of the jurisconsult, carried to the limits of his capacity in the study of sacred scriptures and resulting in a legal opinion for which he was rewarded in the Hereafter, right or wrong. Orthodoxy in Islam, resulting from the consensus of the doctors of the law, was secured on the basis of freedom of expression and freedom of discussion.

The state, that is, the governing power had no control over the curriculum, or the methods of instruction, any more than it did over the foundation of the institution. As regards the latter point, even when the founder was a layman, not himself a professor, his choice of an institution and its organization was usually guided by the wishes of the professor for whom he instituted his foundation. Thus the content of education and its methods were left to the teaching profession itself.

But Muslim education was not all there was to education in Islam. Institutionalized learning was not all the learning available. Philosophy, philosophical or rationalist kalam-theology, mathematics, medicine, and the natural sciences, that is those sciences referred to as the ancient, or foreign sciences, as well as all fields not falling under the category of the Islamic sciences and their ancillaries, were sought

outside of these institutions, in the homes of scholars, in the hospitals, in the regular institutions, under the cover of other fields such as hadith or medicine.

A lay nomocratic theocracy, Islam is a religion based on a system of law whose legislator is God alone. It has no ecclesiastical hierarchy. The doctors of the law are its sole interpreters. The ultimate object of Islamic education is to educate in God's law, encompassing all facets of life, civil as well as religious. It was supported by founders as a meritorious act of charity bringing the founder closer to God. It maintained its private financial base throughout the Middle Ages.

The 'personal' schools of law, the madhabs, and the madrasas which served them as recruiting centres were, in great measure, the result of antagonism between two implacable forces, the basic traditionalism of Islam and the nascent rationalism that developed following the impact of Greek works of philosophy and science made accessible in translations into Arabic. The impact was already evident in the second century of Islam and reached its highest point in the first part of the third century under the caliph al-Ma'mūn, culminating in the Great Inquisition. The change of madhabs from the geographical to the personal designations, and the eventual dramatic decrease in their numbers after their phenomenal proliferation are, to my mind, the result of the traditionalist reaction against the forces of rationalism. Traditionalism used law, always basically a conservative force, as a shield against rationalist speculation. The change to personal schools symbolized their adherence to the founder of Islam, the master-disciple relationship between the Prophet and his Companions. The subsequent proliferation of the schools, in emulation of the Prophet, was, in the face of the onslaught of rationalism, judged eventually to be divisive and accounted, in my opinion, for the disappearance of countless madhabs in favour of the four that survived. In any case, the madhabs as such did not play a juridical role in the constitution of that consensus which led to determining orthodoxy for the Muslim community. The process was fundamentally individualistic: consensus was based on the opinions of the jurisconsults, acting individually, not as schools of law.

The structure of the collegiate system rested on a legal basis defined, interpreted and maintained by the lawyers. Collegiate learning was so organized as to give primacy over all other fields to legal studies, which served it as its handmaids, while all rationalistic studies were excluded from the regular curriculum.

The outcome of the long and bloody Great Inquisition was the decisive triumph of the traditionalists over the rationalist forces. The triumph manifested itself repeatedly through the centuries: (1) in the formation of the personal schools of law as of the second half of the second century (A.D. eighth); (2) in the proliferation of masjids

for the study of law in the third and fourth centuries (A.D. ninth and tenth), exemplified in Buwaihid times by the vast network of masjids with nearby inns for out-of-town students instituted by the governor Badr b. Hasanawaih; (3) in the subsequent development and proliferation of the madrasa combining the functions of the masjid and its nearby inn, in the fourth and fifth centuries (A.D. tenth and eleventh), exemplified in Saljuq times by Nizam al-Mulk's foundation of a great network of madrasas; and (4) in the significant development of other conservative institutions, such as the dar al-hadith, in the sixth century (A.D. twelfth), further rallying the forces of traditionalism. By *traditionalizing* the term *dār*, theretofore used especially for the rationalist library institutions, traditionalism was proclaiming its definitive victory over rationalism, symbolized by both dar al-hikma and dar al-'ilm giving way to dar al-hadith and dar al-qur'an.

In these institutions the muhaddith and muqri' were raised to the level of titular professor. But neither these institutions nor their professors reached the stature of the madrasa and the professorship of law, and their numbers remained small (cf. Appendix B). They often added the study of law to their curriculum, as did the ribat, or monastery, the latter in order to counteract legal opinions declaring as illegal waqfs instituted for Sufis as such.

This traditionalist victory was made permanent by the law of waqf through its one limitation on the founder's freedom of choice; namely, that there be nothing in the foundation that could be construed as inimical to the tenets of Islam. Not only were philosophical doctrines blatantly inimical to Islam banished from its colleges, but also anything tainted with philosophy; and the sole judges of what was inimical were those who issued legal opinions, the jurisconsults themselves.

Thus, of the three major divisions of knowledge, the 'ancient sciences' were banished from the regular courses of institutionalized education, driven away by the waqf's exclusory principle. From then on, these sciences lived a silent, discrete life. The works in these fields which have come down to us are ample proof of their enthusiastic pursuit by Muslim scholars within the Muslim community. And though they were publicly repudiated and cast aside beyond the pale of orthodoxy, they did not fail to affect the course of studies in the traditional institutions of learning.

The scholastic method was the product of a middle road between the two extremist, antagonistic forces of traditionalism and rationalism. It was neither a product of philosophy nor of rationalist theology. It was a product of legal studies. The doctors of the law were brought to it by the exigencies of orthodoxy through consensus. In the institutions of learning it was a method used to produce the doctor of

the law, the jurisconsult, the professor of law, that is, the faqih-mudarris: without it there could be no licence to teach law, or to issue legal opinions. The candidate for the licence to teach and issue fatwas had to defend successfully his theses in oral disputation. His education prepared him to become a jurisconsult and join in the process of determining orthodoxy. This process compensated for the councils or synods which were lacking in a religious system that had no ecclesiastical hierarchy.

Because of the nature of this process of determining orthodoxy, derived from a consensus based on the interplay of the legal opinions of jurisconsults, Muslim educational methods shifted early in the history of Muslim education from a cumulative phase to one of critical understanding and creative inquiry. It was forced to abandon the 'hadith' phase of its education, a system based on the unquestioning reception of hadiths, and their transmission, 'riwaya', and through understanding, 'diraya', pass on to the 'fiqh' phase, a system based on the confrontation of legal opinions in disputation.

This legal methodology became pervasive, and developed into an almost obsessive concentration on the acquisition of dialectical skills, pushing the literary arts into the background, and relating them to the role of ancillaries. The eloquence gained from the literary arts was subordinated to the feverish pursuit of the ability to analyse and synthesize, to arrive at the best possible legal opinion and the best possible defence of that opinion and its eventual consecration by the consensus of the doctors.

Legal science was placed above and beyond the literary arts, and indeed all other fields of knowledge. The ultimate goal of institutionalized learning was the jurisconsult; the ultimate good, the jurisconsult's legal opinion. The professor of law was set apart from all other members of the teaching staff. His designation as mudarris was peculiar to him alone. He was often the trustee-administrator of the madrasa. He alone gave an inaugural lecture as he assumed the chair of law in the madrasa, after which a robe of honour was bestowed upon him and often a banquet given in his honour. All other posts in the college were subordinate to his. For he alone was the interpreter of Islam's positive law whose sole legislator was God Himself.

Orthodoxy was defined in legal terms. A Muslim was recognized as orthodox by his adherence to one of the schools of law. Beyond this, kalam-theology could be considered as 'orthodox' only in the apologetic sense of defending the faith against other faiths or beliefs, not within the Muslim community. This also applied to philosophy. But both philosophy and kalam-theology remained outside the mainstream of institutionalized education. Traditionalism tacitly acknowledged their services as defenders of the faith: first the theologians, (the Ash'aris, followed by the Mu'tazilis), then the philosophers.

The philosopher, the kalam-theologian, the scientist, who were not part of institutionalized learning, received their formation through suhba, the master-disciple relationship, which compensated for the lack of institutionalism. They were products of a parallel underground movement, so to speak. There were no posts for them as such. Those desiring posts in the institutions of learning had to specialize in an acceptable field: such as law, grammar, medicine, etc., as for example in the case of ʿAbd al-Latif al-Baghdadi. Therefore, to study the history of philosophy, kalam-theology, and the other sciences of the parallel underground movement, the historian must turn not only to the men of medical science, a great number of whom were philosophers and natural scientists, but also to scholars usually less suspected of expertise in the ancient sciences: jurisconsults, grammarians, poets, and others.

Though waqf was static in nature, the practice of disputation and constant inquiry kept education dynamic, until such time as the governing power found a way of successfully interfering with the free flow of inquiry by creating the post of the paid mufti. The doctors of the law asserted their right to academic freedom, as embodied in the practice of ijtihad, by refusing to assume the post, as they had from early Islamic times refused the post of qadi, accepting it often on the condition of remaining free to adjudicate freely according to their own lights, without government pressure to bring about a pre-determined legal decision. But such doctors of the law who resisted were fighting a losing battle. The ordinary layman sought the government-paid mufti to avoid paying the fee of the private mufti. This practice eventually put an end to the free flow of legal opinions and to active disputation, leading to the degeneration of the scholastic method, a mere school exercise shorn of its erstwhile dynamic function.

Readers familiar with the intellectual history of the Christian West can hardly fail to see its development as following that of Islam on parallel lines with a time lag of a century or so. But western scholarship has been divided on the question whether Islamic civilization has influenced the fundamental structure of the civilization of the Christian West. The negative opinion is expressed in its most forceful form in the work entitled *Medieval Islam* by the late G. E. von Grunebaum:

> When Western civilization as it crystallized through the Middle Ages and Renaissance is analyzed for its main components, the limited effect of its prolonged but somewhat superficial contacts with the Muslim World is clearly felt. Islamic civilization, one might say, contributed a good deal of detail and acted as a catalizer, but it did not influence the fundamental structure of the West. It may be debatable to what extent modern occidental civilization can be explained as the continuation of classical

> civilization – but *it would be preposterous so much as to ask* whether any of its essentials are of Muslim inspiration . . . *Except for Averroism*, it would seem that never did original Muslim thought influence Western thought so as to remain a live force over a prolonged period of time completely integrated and indispensable to its further growth.[1]

Since the publication of this work in two editions in mid-century, other studies have brought new facts to be added to the meagre store of knowledge regarding relations between Islam and the Christian West. Notable among these studies are those of Norman Daniel whose particular contribution has shed considerable light on the attitude of the Christian West toward Islam, pointing out among other things that it borrowed from Islam without always acknowledging its debt.[2] And W. Montgomery Watt, in his recent book entitled *The Influence of Islam on Medieval Europe*, concluded with the following statement:

> When one keeps hold of all the facets of the medieval confrontation of Christianity and Islam, it is clear that the influence of Islam on Western Christendom is greater than is usually realized. Not only did Islam share with Western Europe many material products and technological discoveries; not only did it stimulate Europe intellectually in the fields of science and philosophy; but it provoked Europe into forming a new image of itself. Because Europe was reacting against Islam, it belittled the influence of the Saracens and exaggerated its dependence on its Greek and Roman heritage. So today, an important task for our Western Europeans, as we move into the era of the one world, is to correct this false emphasis and to acknowledge fully our debt to the Arab and Islamic world.[3]

The first statement cited above is so forceful in its negation that one risks missing the significant affirmation it contains. When negating an influence on the West that was 'completely integrated and indispensable to its further growth', the statement makes an exception in the case of Averroism. To this significant exception many others may now be added.

It is inconceivable that two cultures could develop side by side for literally centuries without being aware of developments on either side. That Islam cared little for what was going on in the West is proof of its indifference to a lesser developed culture. On the other hand, it is common knowledge that the West was not oblivious of the higher civilization of Islam: it learned its language and translated its works in order to bring itself up to the level of the higher culture, the better to defend itself against it.

It unduly taxes the imagination to conceive parallel developments devoid of influence (1) when the number of parallels is so high, (2) when their points of correspondence are so identical, and (3) when

the course of development involves a time-lag of roughly a century. The parallels need not all be the result of direct influence. Once the essential elements have been borrowed, the tendency toward movement in the same general direction may well occur without further direct borrowing, until such time as the parallel courses begin to diverge. The borrowing culture, buoyed up by the stimulus of new ideas and methods, may well spring forward and, in time, outdistance the culture from which it received its initial stimulus.

Naturally one must avoid falling victim to the fallacy of arguing that mere temporal sequence, and nothing else, points necessarily to a cause and effect relationship: post hoc, ergo propter hoc. On the other hand, when several sets of parallels are marked by likeness and correspondence in their course and direction, they cannot reasonably all be merely parallel. When the technical terms used in the two parallel cultures frequently correspond in their meanings not only in form, so that a term may be said to be the direct translation of its corresponding term, but in function as well, then the correspondence cannot reasonably be dismissed as the result of chance, as in no way related by causation. This would be acceptable only when the corresponding meanings are so few in number as to allow for the possibility of coincidence, mere concurrence without any causal connection. But once the correspondences are multiplied, their number and variety growing to such an extent as to preclude the possibility of mere coincidence, then continued insistence on their being merely parallel would be sheer obstinacy, worthy only of the obscurantist. In such a case, to resist admitting influence would be to continue the medieval attitude toward Islam.

The corresponding elements, as indicated in the foregoing pages, are many: (1) the waqf and the charitable trust with their many corresponding fundamental elements, *especially* the founder establishing his charitable institution by an act of his own will without the mediation of either the central government or the church; (2) the madrasa and the college based on the law of waqf or charitable trust, with their foundationers of graduates and undergraduates, the faqih-sahib and mutafaqqih on the one hand, and the fellow and scholar on the other, and other corresponding elements of those institutions: inter alia, the founder's wishes, his freedom of choice and its limitation, the charitable object and the undeclared motives, the overseeing visitors and the beneficiaries; (3) the will of the sovereign in creating universities in Western Islam, Christian Spain and southern Italy; (4) the development of two dialectics, one legal, the other speculative; (5) disputation at the core of legal and theological studies; (6) the unique status of the mudarris-professor of law in the madrasa and the professor of law in the universities of southern Europe, beginning with Bologna; (7) the dars iftitahi and the inceptio; (8) the muʿid and the

repetitor; (9) the shahid and the notary, products of 'ilm ash-shurut and the ars dictaminis; (10) the khadim and the student-servitor; (11) the lectio and the two sets of the three identical meanings of qara'a and legere; (12) the ta'liqa and the reportatio; (13) the summae, such as those of Ibn 'Aqil and St Thomas Aquinas; (14) the craze of versification, as in the grammars in verse by al-Hariri and Peter of Helias; (15) government in grammar, with the Arabic 'amil and the *medieval* Latin regens; (16) the ijaza li 't-tadris and the licentia docendi; (17) the subordination of the literary arts to the three superior faculties, law, theology and medicine, brought on by the single-minded concentration on dialectic and disputation; and (18) a long list of Latin technical terms peculiar to the scholasticism of the Middle Ages with their antecedent corresponding Arabic terms.

The corresponding elements are not exhausted; and the monographic studies on Islamic institutions are still lacking, hindered as they are by the lack of sources in print and within easy reach of scholars.

Of the three components of the scholastic method the element that set this method in motion was the khilaf of Islamic law, the sic et non of the Christian West. The scholastic method it brought into existence remained for long obscure as to its origin. Grabmann traced the sic et non back to a period around 1100, with Bernold of Constance as its first known representative in the West; and he cited Photius, Byzantine ambassador to the caliphal court in Baghdad, as the first to use the sic et non in the East. No connection had been made between it and the much earlier Islamic khilaf. Kantorowicz, in dealing with the origins of legal scholastics, wrote of a missing link. And, more recently, Ehrenzweig, stating that the historical process of the systemization of legal doctrine remains obscure as to its origins, adds the following words:

> I have not yet been able to substantiate my speculation that this entire development, at various stages, was decisively indebted to Islamic tradition.[4]

Back at the beginning of this century, Louis Paetow, of the University of Illinois, was puzzled over the craze of versification, especially in grammar; he found it as incomprehensible as the craze in dialectic. Some six decades before him, at the Sorbonne in Paris, Charles Thurot also puzzled over the scholastic method in medieval Latin grammar, uncertain as to where to put the blame for it:

> If the scholastics have understood Aristotle differently, it is because they brought to his study other concerns. Indeed, in that kind of intellectual renaissance that marks the end of the eleventh century and the beginning of the twelfth, the scholastic method appears already with all its essential characteristics; and yet of Aristotle only the *Categories* and the *De Interpretatione* were known

> up to that time. Nor can one make the Church responsible; up to the twelfth century, she always proved opposed to the use of dialectic in theology; at the beginning of the thirteenth, she was still condemning the works of Aristotle on metaphysics and physics. This exclusive predilection for dialectic and disputation, which struck with sterility the learning of the Middle Ages, is without doubt *due to very complex causes which remain hidden and unknown* as are almost always those which sometimes, for centuries, determine the direction taken by the minds of men.[5]

Khilaf is a specifically Islamic institution, a core component of the scholastic method, influencing the fundamental structure of the West. Christopher Dawson points out that this method gave the West

> that confidence in the power of reason and that faith in the rationality of the universe without which science would be impossible. It destroyed the old magic view of nature which our ancestors shared with every other primitive people and which still lingers on, not only in remote corners of Europe, but under the surface of our modern urban civilization.[6]

Dawson then cites the philosopher Alfred North Whitehead who said that

> the age of scholasticism laid the foundations for the scientific achievements of the modern world.[7]

In higher education, the doctoral degree is still obtained in all departments of a university by the writing of a thesis. And in almost all departments (except, notably history, in some U.S. universities) the thesis is defended orally before the departmental faculty or its appointed ad hoc doctoral committee.

Law seems to be the area in which the influence has been more pervasive than elsewhere. The scholastic method is very much alive in legal education, more so than in other fields of education. Here it has survived in its *oral* form, in what is referred to as the 'moot' courts, still an exercise that is an integral part of the requirement for students of law. It is fundamental to their legal education because it is this very experience that is applied in the trial courts where the essential stages of a complete disputation have survived, including the 'determination'.

In considering the two civilizations, Islam and the Christian West beyond their periods of pivotal importance in the Middle Ages, the question may be raised as to why the Christian West was able to spring forward, while Islam lingered and fell behind? The factors involved are no doubt many and complex;[8] but a most important factor, to my mind, was the provision made for perpetuity in the legal systems of the two civilizations concerned. Islam had only one form of perpetuity, the waqf or charitable trust; the Christian West came out of the thirteenth century with two forms of perpetuity: the corporation, as

well as the charitable trust; and even its charitable trust was, in that century, capped with the corporation, as already seen in the model case of Merton College. Islam's form of perpetuity was static; that of the Christian West, dynamic. Islam laboured under the heavy 'dead hand' ('main morte') of mortmain; whereas the West was able to make use of all the benefits of the waqf, and make even this form of perpetuity dynamic through incorporation.

The divergence in the parallel courses of both civilizations began to take place in the thirteenth century, a great century of corporations for the Christian West. The corporation was undoubtedly one of the factors that allowed the West to forge ahead, while another factor in that same century was instrumental in causing Islam to lag behind. This was the fate that befell Islam's freedom of thought and discussion, the freedom of its practice of ijtihad.

Much has been said of the 'closing of the gate of ijtihad'. The phrase, however, has never been documented. I have not come across any statement to this effect in any document of the Middle Ages when such 'closing' was supposed to have taken effect.[9] To my mind, this phrase would make sense in two ways: first, as putting an end to the formation of additional madhabs, the 'personal' schools of law discussed above in chapter one; and second, as putting an end to the free play of ijtihad in the regular disputations where the various legal opinions of jurisconsults went through a process which led eventually to ijma', consensus.

The 'closing of the gate' to the formation of new madhabs could only be the result of refusal by the jurisconsults themselves to form them. There was no other authority in Islam that could bring a new madhab into existence; and madhabs ceased to exist only as their advocates gradually decreased in number to the point of extinction. This 'closing' may be said to have occurred in the fourth / tenth century with the formation of the last of the four madhabs. But the individual jurisconsults went on practising their ijtihad, being individually charged by Islamic law to make use of it in order to arrive at a legal opinion when solicited for it. The fourth / tenth century put an end to new madhabs, but not to ijtihad, since the method of disputation, the scholastic method, which could not exist without ijtihad, did not reach the peak of its development until the fifth / eleventh century.

The 'closing of the gate' to the ijtihad of the jurisconsults began to take place later in the seventh / thirteenth century. In contrast to the 'closing of the gate' on the formation of madhabs, the 'closing' which put an end to the ijtihad of individual jurisconsults was, needless to say, not the doing of the jurisconsults. Islamic law imposed the obligation of ijtihad on each jurisconsult individually, promising him a reward in the Hereafter, whether he proved to be right or wrong. It was the jurisconsult's chief function, his very raison d'être. 'Closing

the gate' on it was rather the doing of the governing power, the tension between whom and the ulama is as old as the oldest dynasty of governing caliphs, and the effects of which have resurged time and again down to our own times. The governing power has always sought to bring the ulama within its orbit, the better to control and make use of their influence with the community of believers.

The thirteenth century was fateful for both civilizations East and West. But whereas for the West it was the century of corporations, for Islam, it was the century which brought into existence the first governmental post of mufti. The freedom inherent in the function of the mufti gradually weakened and an end was eventually brought to the free play of opinions, arrived at freely and freely debated to the point of consensus. The layman could now get his fatwa gratis from the salaried mufti, rather than have to pay a mufti whose fees were his livelihood. The scholastic method became an emasculated, pro-forma exercise, and eventually disappeared from the scene as a dynamic element in education and in the process of determining orthodoxy.

On the other hand, the scholastic method was kept alive in the West long after it had disappeared from the land in which it developed. The Renaissance of the fifteenth century did not put an end to the practice of disputation in Western institutions of learning. This practice was continued in the college-universities of Colonial America, long after the American Revolution. From 'borrower' in the Middle Ages, the West became 'lender' in modern times, lending to Islam what the latter had long forgotten as its own home-grown product when it borrowed the university system replete with Islamic elements. Thus not only have East and West 'met'; they have acted, reacted and interacted, in the past, as in the present, and, with mutual understanding and goodwill, may well continue to do so far into the future with benefit to both sides.

Appendix A

REVIEW OF PREVIOUS SCHOLARSHIP

1. Preliminary Remarks

Many works have been written on Muslim education. Their number, however, has not been commensurate with the amount of light they have shed on the origin, nature and development of Muslim institutions of learning. The difficulty is due chiefly to factors peculiar to the state of the historical sources. To this day, many sources remain in manuscript; the bias they contain is often not taken into consideration; and the technical sense of key terms often passes undetected. The history of the madrasa thus began with a number of drawbacks. And since the development of the madrasa was linked to causes of a religio-political nature, and these were themselves seen through biased sources, misconceptions developed, and became, in subsequent studies, multiplied, diffused and perpetuated. It would, therefore, be well to review some previous studies in an attempt to lay to rest some theories lacking a basis in fact.

One misconception, mentioned previously, should be dealt with in order to set it aside once and for all; namely, the notion that 'higher education' is synonymous with 'university'. In Islam, the madrasa, representing the institution of higher learning, has been considered a university and referred to as such in works of serious scholarship. Fortunately, this difficulty can be easily dismissed. Historians of medieval education have rightly pointed out that the university is a form of social organization that developed in the Christian West in the Middle Ages. It was here that the university flourished, emerging as a corporation in the thirteenth century, the century in which occurred the flourishing of corporations of all kinds.

In other societies, higher learning took other forms of organization. In Islam, that form was the charitable trust. Islam never developed the university; it simply borrowed it from Europe in the nineteenth century along with many other borrowings, at a time when Western culture was far superior to that of the East. On the other hand, the Christian West did not at first have the charitable trust; it appears simply to have borrowed it from Islam towards the end of the eleventh century, along with many other borrowings, at a time when Islamic culture was far superior to that of the Christian West.

In works on Muslim education by modern Muslim scholars, one

cannot help but feel the natural concern of the author to show that Muslim education in the Middle Ages included higher education. Of this there can be no doubt. But since these authors equate higher learning with the university, they are anxious to show that the madrasa and mosques were universities. Three authors writing in Arabic, English and French[1] are at pains to prove this unprovable point. Such attempts unwittingly do a disservice to the history of Muslim education. The *organization* of the madrasa did not, by any stretch of the imagination, compare with that of the university. It was an entirely different type of organization. For instance, Ghunaima, whose work is valuable and definitely a great improvement over many of its successors as well as its predecessors, cites the following institutions as the earliest 'universities' of Islam: the Prophet's Mosque in Medina (p.33); the Mosque in Mecca, where Shafi'i issued legal opinions at the age of twenty (pp.34–5); the Mosque in Basra, where the Mu'tazili movement was founded (p.35); the Mosque in Kufa, which rivalled that of Basra with its Arabic studies; these two mosques being compared by Ahmad Zaki Pasha (d.1934) to the Universities of Oxford and Cambridge (pp.35–6); the Mosque of Fustat, called Jami' 'Amr; the Aqsa Mosque and Dome of the Rock in Jerusalem; the Umaiyad Mosque of Damascus – all dating from the first century of Islam (seventh of our era). Ahmad Shalabi (on p.117) says of the Azhar Mosque in Cairo, that after it was 'established as a mosque in 359 [A.D. 970], [it] was in 378 [A.D. 988] *declared* a university (*jami'a*)' [emphasis added]. Another author[2] calls the eleventh-century Madrasa Nizamiya of Baghdad a 'university'. And another[3] makes the madrasa, 'developed in the eleventh century', the equivalent of 'the European university'.

A clear distinction must be made between the various forms of the *organization* of learning, on the one hand, and the level of scholarship and scholarly production, on the other. Muslim education was simply not organized into a university system, but rather into a college system. The great contribution of Islam is to be found in the college system it originated, in the level of higher learning it developed and transmitted to the West, in the fact that the West borrowed from Islam basic elements that went into its own system of education, elements that had to do with both substance and method. The great contribution of the Latin West comes from its organization of knowledge and its further development – knowledge in which the Islamic-Arabic component is undeniably considerable – as well as the further development of the college system itself into a corporate system.

The studies reviewed in the following pages are those of some leading authors who have developed original theories, or modified these significantly, theories that may still be found elaborated in manuals on Islam and Islamic education.

2. Julian Ribera on Islamic Influence

a. Powicke and Rashdall on Islamic Influence

Powicke, in the introduction to the second edition of Rashdall's fundamental work on medieval universities, refers as follows to Julian Ribera's theory of Islamic influence on these universities:

> The Spanish scholar who has argued that the European universities were the outcome of Islamic influence seems to us to be in error, but his argument may at least remind us that one of the greatest forces in the medieval university, Mohammedan learning, found a footing in the West in centres, especially Toledo, which were under royal and episcopal influence, in Jewish and other circles in the south of France and, to some extent, in the royal court of Sicily.[4]

Of the two editors of Rashdall's work, Powicke was responsible for the revision of the first two volumes, Emden for the third.[5] The Spanish scholar was Julian Ribera y Tarragó, whom Powicke cites later in a footnote.[6]

Guarded and sparing though it may seem, Powicke's statement went an important step beyond that made in the late nineteenth century by Rashdall. The tenor of the statement of this great historian of universities fairly represents the feeling of Western scholarship on the subject of influence. In treating of the University of Montpellier, Rashdall makes this admission, begrudging but valuable, seeing the scholarly standing of its source:

> Those who are fond of seeing 'Saracenic' influence at work in all the intellectual movements of the Middle Ages may here indulge their *penchant* with some plausibility. The origin of the town is traditionally connected with the destruction of the older city of Maguelone, and of the Saracenic power on the shores of the Mediterranean, by Charles Martel in 737, when the fugitives are said to have taken refuge at Montpellier; and there was a considerable Arabic as well as Jewish population in the town as late as the thirteenth century, while many of the original inhabitants were Spaniards who had long resided among the Moors.[7]

b. Ribera's Contribution

When Ribera suggested that the Islamic experience may have been at the basis of the rise of universities in the West, the argument adduced in support of his opinion was dismissed as not convincing. Ribera had elaborated his argument in a lengthy footnote, in explanation of a statement made in the text.[8] Powicke summarized Ribera's argument in a footnote, and referred the reader to the pages in Ribera's work where the author devotes a whole section to the ijaza;[9] then Powicke dismissed the argument.[10] Rashdall himself does not take notice of Ribera's study published two years before his own work, perhaps unaware of its existence.

Ribera appears to have been the first to treat the question of the ijaza at length, though not the first to see a possible connection between it and the university licence to teach. Daniel Haneberg had already suspected a connection between the two about a half-century earlier.[11] To avoid eventual criticism as guilty of the fallacy of post hoc, propter hoc, Ribera began his note[12] by stating that his idea of the rise of European universities did not suggest itself to him merely on the basis that 'Oriental universities' and the channels of communication opened by the Crusades had preceded in time the European universities, but also on the examination of certain phenomena which, if not accepted, would constitute an enigma. He then cites the following three phenomena: (1) the swiftness with which the universities appear and propagate themselves without the slow and gradual transformation of the organization of studies; (2) the contrast noted at first-sight between the exemptions and privileges, on the one hand, and the cosmopolitanism and democracy, on the other, which prevailed in the customs and organization of these universities, especially in the most ancient University of Bologna, betraying a fusion of opposing tendencies of two distinct civilizations; and (3) the custom of granting certificates or degrees without precedent in the Christian Middle Ages, or in Rome, or in Greece, whereas Muslim masters were already doing so for three or four centuries in that form used in the beginning by university professors, to be converted later in Europe into monopolistic patents and surviving down to the present day.

Moreover, continues Ribera, in Greece, Rome and among the Arabs, the only peoples of antiquity where one can appreciate the evolutionary cycle of studies, one sees that colleges regulated by the state come into being in periods of great decadence, not being a product of imitation, or in connection with careers of direct service to the state, such as the military.

Ribera concludes, 'in any case, even if these considerations carried no weight, I would resist resorting to the saving, but completely discredited, theory of spontaneous generation which appears to be in vogue. See, for instance, Gabriel Compayré, *Abelard and the Origin and Early History of Universities*, London 1893, page 26, where he says: "The universities sprang from a spontaneous movement of the human mind." A very pretty phrase for those who can find any sense in it.'

When Ribera referred to 'Oriental universities', he had in mind the madrasas founded by Nizam al-Mulk in the eastern caliphate. Madrasas, strictly speaking, were colleges. Also, when he speaks of government involvement regarding these institutions, he makes the mistake still current in our manuals; namely, that these madrasas were state institutions. His successors, treated in the next section, were of the same opinion in this regard. That the universities themselves developed rapidly as forms of social organization was not due to

Islamic institutions, but rather to the West itself, in a century that was producing guilds or corporations of all kinds based on a concept of Roman law inconceivable to Islam as a religion and foreign to its social organizations. However, the university of masters could not have developed without the swelling numbers of professors, a phenomenon brought on in turn by an influx of Arabic books producing new studies and new methods, both of which were foreign to the Western scene, and nowhere in evidence outside the Islamic system of education.

Powicke's dismissal of the ijaza as the forerunner of the licentia docendi may well have been due to Ribera's treatment of the ijaza as an authorization to transmit hadith; but a licence *to transmit* has little to do with a licence *to teach*. Such was the ijaza li 't-tadris, the licence to teach law. The requirements for the ijaza to teach law; namely, the defence of the thesis and all the preceding paraphernalia of graduate work – all of this would have been more convincing.

3. The Madrasa According to Max van Berchem

a. His Sources

What we have in our manuals on Muslim educational institutions is based, for the most part, on the work of this eminent scholar. His theories have been used by certain authors whose eminence guaranteed their subsequent wider dissemination, although they may not always have cited the original source.[13] Max van Berchem had, at one time, the intention of devoting a full-length work to the history of the madrasa. His intention was regretfully not to be fulfilled. However, we have the provisional sketch he offered pending the time when he could devote himself to the task more fully. This provisional sketch was nevertheless based on several years' work devoted to the subject: 'Ceci n'est qu'un aperçu provisoire. Travaillant plusieurs années, à cette étude, j'ai l'intention de la développer dans un mémoire plus étendu'.[14]

Writers depending on van Berchem's theories do not quote them extensively; some do not cite him at all. It would therefore be well to review them here, giving them the extensive analysis they surely deserve. Besides the question of accessibility, three other reasons for such an analysis are suggested: (1) they are at the basis of all future serious writing on the subject, departures from which being, for the most part, variations on the same themes; (2) they embrace not only the madrasa as such, but also religious and political factors that are considered to have given rise to the birth of this institution; and (3) the author's insights are remarkable and worthy of the highest admiration, in spite of the inadequacy and bias of his sources. He knew what questions to ask, though the answers obtained may have been wrong.

Van Berchem cites his principal sources as follows: 'Ibn Khallikān, Ibn al-Athīr, al-Bundārī, al-Baihaqī, Mirchond, the *Siyaset Nameh*

[attributed to Nizam al-Mulk (d.485)], Abū'l-Fidā', al-Maqrīzī, generally all the historians of the Saljūqs, the Atabegs, the Aiyūbids, and the Mamlūks; several geographers; the biographical dictionaries (ṭabaqāt) of the theologians, jurists and professors; the topographies of Baghdad, Aleppo, Damascus, Jerusalem, Cairo, with the descriptions of the madrasas. The special works cited by Wüstenfeld (*Die Academien der Araber*, p.v) seem to have disappeared; I have not consulted the Berlin Ms. Petermann, no. 476'.

Van Berchem cites the following studies: 'Wüstenfeld, *Die Academien der Araber*, and *Der Imam el-Shafi'ī*; Goldziher, *Muhammedanische Studien*; Haneberg, *Schul- und Lehrwesen der Muhamedaner*; Fell, *Ursprung und Entwicklung des höheren Unterrichtswesens bei den Muhammedanern*; Dozy, *Histoire de l'Islamisme*; the works of Schmölders, Haarbrücker (transl. of Shahrastānī), Houtsma, Spitta, Mehren, Schreiner, etc. on the sect of Ash'arī'.[15]

The Arab and Persian historians cited by the author are all late historians, the earliest among them being the seventh / thirteenth-century Ibn al-Athir (d.630 / 1233). Moreover, they are either biased in favour of Ash'arism, or they copied sources that were so biased. The modern authors cited on Ash'arism are, for the most part, biased in favour of this theological movement, because they relied uncritically on sources that were so biased.

For details on the bias of the sources and their influence on modern scholarship, as well as for details on the political scene and the religious movements in eleventh-century Baghdad, the period in which the madrasa flourished, the interested reader is urged to refer to previous studies where these matters have already been treated.[16]

b. His Theories

Van Berchem distinguishes between two kinds of madrasas: (1) 'private'; and (2) 'political'.[17] At the beginning, the term 'madrasa' simply means 'a place of study in general'. Little by little the madrasa takes on a clearer form: it becomes an edifice, or a simple locale converted for the purpose of giving courses, often built by the professor himself, near a mosque or near his home.[18] These are the original madrasas. They are founded in Nishapur, Merv, Bukhara, Amul, Tus, Tabaran, Baghdad and other cities in what are now the countries of Iran and Iraq. 'Curious thing', remarks van Berchem, '[the original madrasa] seems to have been born in the midst of the Shi'ite populations of Eastern Persia, where, since the second century (eighth century A.D.), shines brilliantly a very prosperous home of Sunni studies connected with the rise of Shafi'i.'[19] 'But', continues van Berchem, 'these establishments, often modest, are of a *private character*; whereas the *official* courses are generally held in the mosque, the original madrasas are due to the professors themselves, and the teaching they dispense in them is *independent and personal*.'[20]

Van Berchem goes on to say that in the fifth / eleventh century, the madrasa forsook this modest role to become 'a *state institution* with political tendencies, *founded* and *directed* by the government', this evolution being tied to phenomena of a more general character: the decadence of the caliphate, the orthodox reaction and the advent of Mongol (sic) dynasties.[21]

Van Berchem sees the fourth / tenth century as exhibiting a double reaction on the part of the Sunni orthodoxy: '(1) against the Shīʿite heresy; and (2) against the free philosophy of the Muʿtazilis'. He sees the Ashʿari movement as the restorer of the old Sunna of the Prophet. He points out that Ashʿarism is not a rite (*madhhab*), but a confession (iʿtiqād), a sort of religious philosophy superimposed upon the ritual practices of orthodox Islam. He sees Ashʿarism as inspiring 'the orthodox rites', as taught in the schools of Abu Hanifa, Shafiʿi and Malik. Consequently, the Saljuq princes protect Ashʿarism.[22]

On the political scene the Saljuqs become allies of the weak caliph against the Buwaihids, the 'Alids, the Fatimids, and then the Assassins. They cement their alliance with embassies, treaties and reciprocal marriages. This bold policy needs religious and juridical sanction. This is when the faqihs, that is the Sunni theological jurists, notably the Shafiʿis, become the most zealous supporters of the new sovereigns. From simple professors (mudarris) they become influential diplomats, and their moral power exerts itself upon the sovereigns themselves. They are consulted on all things; not only on problems of abstract law, but also on the hottest issues of the day: on the legitimacy of the Fatimid caliphate, on the *oath* due to the Abbasids. They are listened to; they are feared. They even dare to threaten the caliph himself, raising their voices as did the Prophets of old.[23]

The reason for this boldness is that the faqihs are not merely school teachers and ministers, but also spiritual guides. Added to their professional and political power is the prestige attaching to all clergy, and which they exercise on the masses. Here van Berchem quotes Brother Felix Faber who visited Cairo in 1483, and who speaks of the spiritual, juridical and pedagogical authority of the professor (mudarris):

> Sunt autem inter eos triplices sacerdotes. Aliqui praesunt gymnasiis, et legunt in scholis jura et leges eorum, et quia doctores sunt, ad regendum populum ordinantur, et vocantur mudarris.
>
> (Now among these there are priests with a triple function. Some are at the head of schools, and teach [literally: read] in the classrooms their legal principles and laws; and because they are learned men, they have been charged with guiding the people, and they are called mudarris.)[24]

These professors are venerated by the people in life, and canonized by them after death. In their hands are the consciences of the people and the exercise of the law. With these two powerful levers they direct public opinion. In a society that has no absolute code, their opinion is law and this law extends to the throne itself. Thanks to the universal role of the faqihs, Sunnism spreads into all levels of society. It causes a new spirit to be born, fatal to freedom of conscience, to all seeds of independence, but very useful to the sovereigns.[25]

It is at this juncture that van Berchem sees the madrasa as a school of theology, leaving the private domain in order to become a political institution under the official control of the state. As such, he sees it as the creation of Nizam al-Mulk, wazir of the Saljuq sultans Alp Arslan and Malik-Shah. In the fifth / eleventh century, this wazir founded a madrasa in Nishapur for the famous jurist al-Juwaini; and a few years later, he founded another in Baghdad for the famous Shirazi. He went on to found others in Basra, Isfahan, Balkh, Herat, Mosul and elsewhere. His example was followed and the madrasa thus spread throughout the Saljuq empire.[26]

Van Berchem sees the madrasa as both a mosque and a school of theology; a place for worship and prayer, and where the religious sciences are taught according to the doctrines of Ash'ari. It is also a school of law, and herein resides its true historical significance: it disseminates the doctrines approved by church and state and serves as a court of justice. This law is taught by the faqihs, previously simple professors, now pillars of church and state.[27]

Van Berchem points out that madrasas were first founded mostly for Shafi'is. That was, he explains, because the Sunni reaction of the fifth / eleventh century was made especially in the name of Shafi'i, and this was because his rite was the most widespread in the region in which it was born. However, as no hostility existed among the four principal rites, founded by Abu Hanifa, Malik, Shafi'i and Ahmad b. Hanbal, madrasas were founded for each of those four because they had to supply graduates for all public offices. Often madrasas were established for two rites in the same edifice: this was the double madrasa. At other times, the same edifice contained all four rites: this was the quadruple madrasa, as in the case of the Mustansiriya Madrasa in Baghdad.[28]

Such are the main ideas sketched for us by van Berchem concerning the madrasa. His brilliant insights are all the more remarkable for being based on a curious mixture of fact and fantasy. Before proceeding to modern scholarship's next thesis on the madrasa, it would be well to sum up the essential elements in Max van Berchem's thesis, published in 1894, and to conclude with a critique.

The fifth / eleventh century is seen as the turning point in the history of the madrasa. From the private, independent and personal institu-

tion that it was, it now becomes public, political and official. This change comes about as a reaction against the ascendancy of Shiʿism in face of the weakness of the caliphate. The Saljuqs come in as allies of the Sunni caliphate against the Shiʿites. The wazir of the Saljuqs, Nizam al-Mulk, creates the new madrasa, public and official, an instrument of the political state. Against Shiʿism in all its manifestations (Buwaihids, ʿAlids, Fatimids, Assassins), the doctrine of Ashʿari is promoted, becoming the theology taught in the new institution. The Sunni reaction being a double one, Ashʿarism is used also against Muʿtazilism. The madrasas, at first Shafiʿi, become also Hanafi, Maliki and Hanbali, there being no hostility among them. And since Ashʿarism is the doctrine taught in all madrasas, it inspires all madhabs, 'rites' or schools of law, the Hanafi, Maliki and Hanbali, as well as the Shafiʿi. The madrasa is both an institution of theology and an institution of law. The faqih undergoes a change from the simple professor that he was before the advent of Nizam al-Mulk, to the diplomat working for the state and endowed with a threefold authority: spiritual, juridical and pedagogical.

c. Critique

The nature of the madrasa, as a social institution, can easily lead to misconceptions. As a waqf, or charitable trust, it consists of private property placed in trust for a public purpose. This ambivalence between *private* and *public* has led to a basic misconception regarding the madrasa; namely, its division into two sets of institutions, one private, the other public. Whereas, in reality, it remained essentially a privately endowed institution destined for the public, *but according to the wishes of the individual founder who established the institution, and who limited its public character.*

Once this distinction is grasped, other difficulties are easily solved. No longer is it necessary to explain why a madrasa, supposedly a state institution – which it never was – could represent only one system of law, of the four surviving systems of Sunni Islam. The reason is simple: the founder wished to limit his institution to that particular system and no other. The law of waqf gave him that privilege. The madrasa remained an institution of 'private, independent and personal' origin, destined for a limited public purpose, limited by its founder acting as a private Muslim. The function of the madrasa remained the same as that of its predecessor, the masjid, devoted to the study of law. It had no special mission to serve against Shiʿism or Muʿtazilism, or any other movement, that was not previously the mission of the masjid. Shiʿism had its own masjids and later, its own madrasas, to teach their own law. The madrasa, like the masjid, represented a school of law, not a school of theology, whether Ashʿari, or Muʿtazili. The faqih was a professor and often also served the sovereign as ambassador, for instance, before the advent of the madrasa.

The thesis of van Berchem remained the dominant one in studies on the madrasa, with mostly modest modifications made by his successors, with the exception of Goldziher's.

4. The Madrasa According to Ignaz Goldziher

a. Modification of Van Berchem's Thesis

Goldziher made a far from modest modification to van Berchem's thesis. It had to do with the orthodox reaction. Van Berchem had seen this reaction as one directed by the Sunnis against Shiʿism, on the one hand, and Muʿtazilism, on the other. Goldziher, implicitly accepting the existence of an orthodox reaction connected with the development of the madrasa, saw the reaction in a different light. He saw it as that of one orthodoxy against another. He saw a new theological doctrine, Ashʿarism fighting against an intransigent orthodoxy, Hanbalism, on the one hand, and Muʿtazili rationalism, on the other. The modification he brought to this thesis of Max van Berchem consisted in splitting the Sunni orthodoxy in two, a new one and an old one; and he saw the new one, Ashʿarism, as a middle road theology emerging victorious between the two extremes of Muʿtazili rationalism, and the old orthodoxy of Hanbali traditionalism. He concluded that Ashʿarism was victorious because he believed that the Shafiʿis were Ashʿari in creed, that the professors of the Nizamiya Madrasa were hired as Ashʿaris to teach Ashʿari theology. Since he believed that Ashʿari theology was being taught in the Nizamiya, and that the Nizamiya was an official public institution of the State, he concluded that the State was therefore sanctioning Ashʿarism as the new theology of the State, the new orthodoxy of Islam.

Goldziher wrote his *Vorlesungen* in 1910, which was then translated into English in 1917, into French in 1920, and some years ago, into Arabic. The French version was translated by Félix Arin who wrote in his translator's preface to the work[29] that his version follows exactly the text of the original German edition of 1910[30] except for some additions and modifications made by the author, to whom the translator had submitted the proofs. A second German edition of the work was published in 1925, four years after the author's death, by Franz Babinger.[31]

Goldziher's work has therefore had wide circulation. Its influence has penetrated far and wide, because of the author's great authority in the field of Islamic studies, a reputation well deserved. His statements regarding the Nizamiya Madrasa and the Ashʿari movement passed unquestioned into our studies and manuals on Islam. These statements appear in the following passages quoted from his *Vorlesungen*:

> ... for a long time it was not possible for (the Ashʿaris) to venture to teach theology in public. It was not until the middle of the eleventh century, when the famous wazir of the Saljuqs, Nizam

al-Mulk, created *public chairs* in the great schools founded by him in Nishapur and Baghdad *for the new theological doctrine*, that Ash'arite dogmatic theology could be taught *officially* and was *admitted into the system of orthodox theology*; its most illustrious representatives were able to have *chairs* in the Niẓāmīyā institutions. It is therefore here that the *victory of the Ash'arite school* was decided in its struggle against *Mu'tazilism*, on the one hand, and *intransigent orthodoxy*, on the other. The era in which these institutions flourished is therefore important, not only in the history of education, but also in that of Muslim dogmatic theology.[32]

b. Critique

In this passage there are several points in need of clarification. First, Goldziher thought the professorial chairs in the Nizamiya institutions were *public* chairs. He thought so because Nizam himself was a public personage who was acting as representative of the Saljuqs in his capacity as prime minister of the government in that dynasty. There are still those who think that the official or public status of the founder endows his institutions with an equally official or public status. But the status of the founder did not in any way alter the legal status of the institution he founded: the institution remained a waqf, a charitable trust. The institution itself was run in accordance with the wishes of its founder, Nizam al-Mulk, who made it an exclusively *Shafi'i* institution. Only those students who had chosen to adhere to the Shafi'i madhab were eligible for admission. The Minister of Finance of the same Saljuq Alp Arslan, Abu Sa'd al-Mustaufi, founded an institution of his own, the Shrine College (Mashhad) of Abu Hanifa, as an *exclusively Hanafi* institution. Unlike the Nizamiya Madrasa, that of Abu Hanifa represented the madhab to which the Saljuq Sultans belonged. The passage in Bundari's history of the Saljuqs of Iraq shows that Abu Sa'd was not to be outdone by Nizam al-Mulk.[33]

Not only was the Nizamiya Madrasa *not an official institution*, its first professor, Abu Ishaq ash-Shirazi, teaching there for sixteen years until his death, was not a *rationalist* Ash'ari. In his extant works, he opposes Ash'ari doctrine;[34] and he is quoted as stating that his opinions are opposed to those of the Ash'aris: '. . . and these are my books on usul al-fiqh in which I profess doctrines in opposition to those of the Ash'aris' (wa-hādhihī kutubī fī usūli 'l-fiqhi aqūlu fī-hā khilāfan li 'l-Ash'arīya).[35]

The waqf deed of the Nizamiya Madrasa cites posts for the following personnel: (1) a professor of law (mudarris); (2) a preacher of the academic sermon (wa'iz); (3) a librarian (mutawalli 'l-kutub); (4) a reader of the Koran to teach Koranic science; and (5) a grammarian (nahwi) to teach grammar, Arabic language and literature. The waqf deed further makes it clear that: (1) the Nizamiya

Madrasa constitutes an endowment for the benefit of members of the Shafi'i madhab, who are Shafi'i in both fiqh (positive law) and usul al-fiqh (legal theory and methodology); (2) the properties with which the Nizamiya is endowed are also for the benefit of those who are Shafi'i in both fiqh and usul al-fiqh; (3) the following members of the staff must be Shafi'i in both fiqh and usul al-fiqh: (a) the professor of law; (b) the preacher; and (c) the librarian; nothing is said regarding the reader of the Koran and the grammarian in this regard in the extant document. Nowhere is there any mention made of rationalist theology (kalam) or of a rationalist theologian (mutakallim), or of Ash'arism. A madrasa was often founded according to the wishes of the jurisconsult chosen for its professorship of law. Shirazi, anti-Ash'ari in legal theory, was very likely, at the source of the Nizamiya's double requirement: the professor of law had to be Shafi' in both positive law and legal theory and methodology. The latter field, closely related to theology, could be imbued with Ash'ari doctrines. Thus the Nizamiya Madrasa, far from having been founded for Ash'ari kalam – theology, insisted on its professor law being of strictly Shafi'i bent even in legal theory and methodology.[36]

To the name of Nizam al-Mulk and the Nizamiya Madrasa, Goldziher added that of the famous Ghazzali. On these three names he built his theory of the victory of Ash'arism and its emergence as the new orthodoxy of Islam. But Ghazzali did not get to Baghdad and its Nizamiya Madrasa until 484 H. The first professor of the Nizamiya, the anti-Ash'ari Abu Ishaq ash-Shirazi, and the intervening quarter of a century since the foundation of the college, are passed over in silence. The idea of an official Nizamiya had been facilitated by Max van Berchem's division of the madrasa into both 'private' and 'political', the latter being considered an instrument of the State because a statesman had founded it.

Goldziher carries his modification further. Whereas van Berchem spoke of the doctrine of Ash'ari as having been supported by the Saljuqs, Goldziher wanted to make it clear that it was not Ash'ari but rather the Ash'aris, his followers, who developed this doctrine by the middle of the eleventh century into one of *middle road* orthodoxy, between the two extremes of Mu'tazilism and Hanbalism. With this modification Goldziher apparently wished to avoid a problem raised by van Berchem's theory. For if the Saljuqs had indeed supported the doctrine of Ash'ari, why then was Ash'ari cursed from the pulpits of Khurasan by order of the first Great Saljuq, Tughril Beg? Goldziher parries the problem by cutting Ash'ari off from his followers. He postpones the alleged victory until the inauguration of the Nizamiya Madrasa after the middle of the eleventh century. By this time, the cursing of Ash'ari had ceased; the reason being that Tughril Beg's wazir, 'Amid al-Mulk al-Kunduri (d.457 / 1065), a Hanafi Mu'tazili,

was eliminated from the scene and his place filled by Nizam al-Mulk, wazir of the second Great Saljuq, Alp Arslan, and of the third, Malik-shah.

The thrust of Goldziher's thesis is on Ash'arism, an Ash'arism purged of Ash'ari, its eponym. Shi'ism recedes into the background of the scene and in contrast to Ash'arism's role in the rise of the madrasa, pales in importance. Goldziher sees the madrasa as an Academy of theology. But the madrasa was a college of law, with ancillary subjects. The teaching personnel did not include a theologian as such. The titular professor was a professor of law. He may have been a theologian also, but he held his post in his capacity as a professor of law. There was no post for the teaching of theology (kalam).

It may be asked whether if the madrasa was not used as an instrument to inculcate the new Ash'ari spirit, what purpose did it serve? The purpose it served was and remained the exact same purpose served by its precursor, the masjid: it taught one of the systems of the four surviving systems of law. When it was a double, triple or quadruple madrasa, as was later the case with some institutions, it taught two, three or four systems, respectively, each system remaining independent of the other, complete and sufficient unto itself. Even when one professor taught more than one system, as also happened in later times, he was the one who moved from one corner of the madrasa to the other, where the adherents of each system were located; the students remained in their place, not mixing with students of the other systems. The multiple madrasa was in fact a madrasa which contained other madrasas, as it were, each system representing a madrasa, though all were housed in one architectural complex. When members of two or more systems came together they did so for other academic purposes, as for instance to carry on disputations between advocates of opposing opinions.

5. The Madrasa According to J. Pedersen

J. Pedersen wrote about the madrasa in an article of monographic proportions published in the first edition of the Encyclopedia of Islam, sub verbo 'masdjid'. He treated the madrasa under the rubric 'mosque' because he believed that there was no difference between these two institutions, stating that 'there was . . . no difference in principle between the madrasa and other mosques', thus considering the madrasa, in effect, as a mosque.[37] In a previous section of the article, he stated that 'the type of school known to us is built as a complete mosque. Since even the older mosques contained[38] living-rooms which were frequently used by students, there is no difference in principle between the school and the ordinary mosque; only the schools were especially arranged for study and the maintenance of students'.[39]

At the same time, he saw the origin of the madrasa as deriving from the institution called dar al-ʿilm: 'While the institutions called *Dār al-ʿIlm* developed in Fāṭimid countries into centres of *Shīʿa* propaganda, the madrasa grew up in the east out of similar Sunni institutions'.[40]

Further on, he states that 'if the madrasa, as a building, had little independence, its character as a home for students and place of instruction was very marked. But even where it was quite an independent institution, the distinction between madrasa and ordinary mosque was very slight, all the less as sermons were also preached in the madrasa'.[41]

Citing Ibn al-Hajj (d.737/1336) as one who, 'in the viiith century [A.D. fourteenth] still wants to distinguish between *masdjid* and *madrasa* and to give more importance to the former (Madkhal, ii. 3, 48)', he goes on to state that 'the distinction remained however quite an artificial one and this is true between *madrasa* and *djamiʿ*'.[42]

There are thus two conclusions to be drawn from Pedersen's statements cited here. First, that there is no difference in principle between the mosque and the madrasa; and second, that the madrasa derives from the institution called dar al-ʿilm. As explained in Chapter One above, both of these conclusions are erroneous. Also, if the madrasa 'grew up in the east out of similar Sunni institutions', meaning the dar al-ʿilm, and if the madrasa does not differ in principle from the mosque, the specificity of each of these three institutions is obscured.

Pedersen's idea that the madrasa is derived from dar al-ʿilm is taken up by Youssef Eche, and further developed, especially as regards the Shiʿa note struck by Pedersen in reference to this institution.[43]

6. The Madrasa According to Youssef Eche

In contrast to Goldziher, and in agreement with Pedersen, the thrust of Eche's thesis is on Shiʿism; and whereas Goldziher does not make mention of van Berchem, Eche cites him extensively, and subscribes to the political and religious motives that van Berchem believes contributed to the birth of the madrasa. He does not, however, subscribe to the latter's 'private madrasa' as the intermediate form of institution between the mosque, on the one hand, and the madrasa organized by statesmen, on the other.

Eche asks a rhetorical question:

> These private madrasas, peculiar to Persia, could they be the model copied by the creators of the madrasas of Iraq, Syria and Egypt? In other words, could the transformation of the madrasa, private and abridged, into a state institution, large and conscious of its role, be accomplished overnight without the aid of a model already in its fullness and vigour: the *dār al-ʿilm*?

Eche then answers the question:

It is inconceivable. Here we have, in a positive manner, a parallelism between the *dār al-ʿilm* and the *madrasa*, a parallelism which shows the influence of the former upon the latter.[44]

a. The Role of Dar al-ʿIlm

Eche's work deals with the history of libraries in Islam, one of which was the dar al-ʿilm. The thesis he supports goes back to a statement made by his former professor, M. Gaudefroy-Demombynes, that the madrasa is a transformation of the dar al-ʿilm.[45] Eche gives in support of that statement reasons resting mainly on the Sunni-Shiʿite opposition, adumbrated by van Berchem. The substance of his reasoning runs as follows: The dar al-ʿilm was an instrument of Shiʿite-Ismaʿili propaganda. The madrasa reacted principally against the Shiʿite heresy, and thus replaced or superseded the dar al-ʿilm. The dar al-ʿilm of Sabur in the Karkh quarter of Baghdad was destroyed by the Sunni population, though this cannot be proved; in any case, its surviving books were dispersed by the Sunni conqueror (i.e., the Saljuq, Tughril Beg). Saladin causes the dar al-ʿilm of the Fatimids to disappear. The Crusaders, unwittingly always helping the Atabegs and Aiyubids, destroyed the dar al-ʿilm of Tripoli (Lebanon) and almost simultaneously that of Jerusalem. The creation of the *new madrasa* (i.e., the public, official madrasa as conceived by van Berchem and confirmed by Goldziher) follows the destruction of the dar al-ʿilm (of Baghdad in 451 H.): the Nizamiya Madrasa and the Madrasa of Abu Hanifa were inaugurated in 459 / 1066, eight years after the disappearance of the dar al-ʿilm founded by Sabur.[46]

Eche goes on to explain how the madrasa appears to continue the dar al-ʿilm:[47]

1) The dar al-ʿilm is a quasi-official institution, administered as a public waqf establishment; so also is the *madrasa* whose waqf charter is similar to that of the dar al-ʿilm.

2) The dar al-ʿilm offered hospitality to professors and students; the madrasa did the same.

3) The dar al-ʿilm received the remains of a venerated personage; the madrasa did the same. Eche cites the Madrasa of Abu Ḥanifa as an example and says that the Nizamiya Madrasa was supposed to receive the remains of Shafiʿi which were to be transferred to it from Cairo (the Qarafa Cemetery). Eche does not agree with van Berchem that this notion was merely a legend. Eche cannot support his claim; it is simply what he thinks to be true ('Je suis même porté à croire que . . .').

4) The dar al-ʿilm welcomed adab-literature at a time when the mosque, previously hospitable towards this field, began to show hostility towards it in the fourth / tenth century. Adab leaves the mosque and establishes itself in the dar al-ʿilm. In the madrasa, adab becomes established from the outset, although it had nothing to do

with the religious and political action planned by this institution.

5) The library, which had a choice place in the dar al-'ilm, passed directly on to the madrasa. The Nizamiya Madrasa, in addition to its classrooms for teaching, had also its beautiful library, one of the most famous in Arab history. Before the fifth / eleventh century, not a single mosque could boast of a special edifice for the library. Eche feels strongly about this point: 'The influence of the dar al-'ilm here could not have the shadow of a doubt. The Arab library passed directly from the dar al-'ilm to the *madrasa*. We cannot establish a single stage of evolution'.

6) Another transmission of influence from the dar al-'ilm to the *madrasa*, even more suggestive and more important, is that of students. Students gain freedom of entry in the dar al-'ilm institutions. Here is how they got it. Under the modest guise of meetings, polemics and discourses of learned men, teaching penetrates into the life of the dar al-'ilm institutions. Eche gives examples here.

7) This argument is considered by Eche to be 'glaring proof' of the evidence cited in demonstration of the transmission of teaching from the dar al-'ilm to the madrasa ('Une preuve éclatante vient renforcer les témoignages rapportés'). The dar al-'ilm is a library where an attempt is made to inculcate a teaching of heterodox propaganda and initiation. The madrasa replaced this by the teaching of the Sunna. The Sunna consists in being guided in one's life by the deeds and prescriptions of the Prophet. The study of the hadith in the madrasa was for the purpose of opposing Shi'ite propaganda. The first madrasas created in reaction against the heterodox teaching of the dar al-'ilm adopted the teaching of hadith. As though done on purpose, this teaching sometimes took place in the madrasa library.

8) In this last argument, Eche sees 'the agency of the book in Arab teaching' as a common element tying the library (i.e. dar al-'ilm institutions) with the 'Muslim university' (the madrasa). The authority of the professor is based on the books he teaches. Eche points out that this is a subject which has not yet been studied, but he wishes to stress the system of degrees. For professor and student alike, the book is the means of exchange. The professor is reduced to playing the role of commentator, and the student that of one who knows works understood and assimilated. In the fifth / eleventh century, and under the influence of the doctors of the Sunna, the state begins to impose a single doctrine (Ash'arism) barring the road to discussions and innovations. This stationary state of affairs coincides with the establishment of the madrasa whose primary goal, as indicated by their history, is to unify religious doctrines and impose this unification. The madrasa throws in its lot with the book and proclaims the book's authority. It even goes so far as to recognize nothing but the book, since some are established to teach one particular work; for instance,

Dar al-Mathnawi in Baghdad (the *Mathnawi* being a work by Jalal ad-Din Rumi, the Persian mystic).

Eche then summarizes his arguments showing what he considers to be the influence of the dar al-ʿilm on the madrasa:

> In spite of the difference in principle, this institution [the madrasa] copies from its predecessor, let us say precursor, certain practices of which the following may be cited: (1) the administrative organization of the waqf; (2) the attempt to bring together to give room and board, under the distant influence of the *khizānat al-ḥikma* institutions, the student class, brought into existence as a result of the development of the sciences; (3) the burial-place given, in a kind of mausoleum, to certain important personalities; (4) the library in all of its developed splendor and vigor at the time of its existence in the *dār al-ʿilm* institutions. It preserves the memory of its existence in the *dār al-ʿilm* institutions. It preserves the memory of this existence in these sorts of courses of *ḥadīth* which are taught in it.
>
> Thus, in the brilliant and profound words of our respected professor Monsieur Gaudefroy-Demombynes, 'the transformation of the *dār al-ʿilm* into the madrasa' is a reality. The library [*dār al-ʿilm*] gave birth to the Arab university.[48]

b. Critique

This lengthy paraphrasing of Eche's arguments can be justified only on the grounds that they constitute the most recent statement by a noted scholar on the origin and development of the madrasa. Also, it goes all the way back to van Berchem's sketch published well-nigh nine decades ago. Except for two references to the article on the 'masdjid' in the *Encyclopedia of Islam* by Pedersen, it passes over in silence all intervening studies on the subject. Eche was apparently not aware of my study published in 1961,[49] treating of the madrasa and other institutions of learning in Baghdad in the period he, like van Berchem and Goldziher before him, considered as of crucial importance for the religious and political factors involved in the rise of the madrasa, the fifth/eleventh century. Nor does he seem to have been aware of the work on Ibn ʿAqil, treating of the political scene in Baghdad and the religious movements there in the period just prior to, and including, the fifth/eleventh century.[50]

Eche's arguments will now be considered one by one to test their validity:

1) The fact that the dar al-ʿilm and the madrasa are both waqf establishments does not mean that one was derived from the other. Waqf was the only form of perpetuity in Islam. However, neither one nor the other institution was an official or quasi-official establishment. A waqf institution is established by a founder in his capacity as a *private* Muslim individual, using his *private* property and wealth to

found an institution for a *public* charitable purpose, as an act which he hopes will draw him closer to God (qurba).

2) The hospitality offered by the dar al-ʿilm was transitory, given to visitors who came to the library to study for an unspecified period of time, as guests of the founder, who assigned them a stipend during their stay if they were in need of it. This was true, for instance, of the dar al-ʿilm of al-Mausili.[51] On the other hand, the madrasa's hospitality was written into the waqf deed. Once accepted as a foundationer, the student received his stipend as of right. The founder, once his waqf deed was signed, could no longer withhold such stipends, unless with cause, and the cause had to be specified in the deed. Also, the stipends of madrasas, the room and board, so to speak, were not transitory; they were of a permanent character, independent of the founder and of his lifespan: they continued to be offered after his death.

3) Not all dar al-ʿilm institutions received the remains of venerated persons; nor did all madrasas. The Shrine College of Abu Hanifa was designated by that name because it was founded at the site of Abu Hanifa's tomb which was already there with a dome constructed above it.[52] There is not the slightest shred of evidence that Shafiʿi's remains were to be transferred to the Nizamiya of Baghdad; van Berchem was right in this regard. In constrast to the college named after Abu Hanifa, the Nizamiya was named after Nizam al-Mulk.

4) One cannot come to the conclusion that the dar al-ʿilm influenced the madrasa on the basis that adab was taught in the former, then in the latter. Adab was also taught in the masjid. This is an institution that Eche ignores altogether as an institution of learning, precursor of the madrasa. The masjid served from early times as an institution for the study of grammar, including adab-literature. Yaqut cites masjids for this purpose, among them that of al-Kisa'i;[53] and Shafiʿi taught grammar and literature in a jamiʿ.[54] Grammar and adab remained among the ancillaries for the study of law, as well as for the elucidation of Scripture, in masjids as well as in madrasas.

5) Libraries were not peculiar to the dar al-ʿilm; many individual notables had libraries of their own. It would be gratuitous to draw the conclusion that it came from one particular quarter to the exclusion of others, unless other supporting evidence is available.

6) Here Eche assumes that what happened in one region, Cairo, under a heterodox regime, the Fatimid, happened also in another region, Baghdad, under the Sunni Abbasid caliphate. His source for fourth / tenth-century Cairo is the ninth / fifteenth-century Maqrizi. He then cites the plans of the caliph al-Muʿtadid in Baghdad for an institution of learning in his palace, which plan was never to be put into operation. There is no information available on what it would have been exactly. Eche is, moreover, inconsistent in defining the dar al-ʿilm as a library in the beginning of his work (see pp. 1 ff.), then

generalizing on the basis of the Cairene dar al-ʿilm that students were admitted and followed regular courses. All available evidence points to a general westward movement in the development of education, with Baghdad being the cultural centre.

7) Here Eche says that the dar al-ʿilm was a library where students were taught. He sees the teaching of hadith in the Nizamiya as evidence of a spirit of opposition and imitation at the same time. An interesting theory, but possible only if there had not been a locale where hadith was previously taught: in the halqas of the Mosques, and in the masjids, two very prominent and natural places. It would be rather far-fetched to seek imitation and influence elsewhere. Hadith was taught in the halqas and masjids of Baghdad and other Muslim cities before and after the advent of the madrasa.

8) In this last argument, Eche sees the *book* as the link between the library and the madrasa, which he calls the 'Arab university'. But the book was in every kind of library: why make it the exclusive instrument of the dar al-ʿilm, then draw the conclusion that this institution influenced the madrasa? If this were admitted, what is to be thought of the masjids where the book was used previously, and where the teaching-learning activity developed centuries before the madrasa came upon the scene?

Eche subscribes here to the notion put forth by van Berchem that in the fifth/eleventh century, the State began to impose a single doctrine (i.e., Ashʿarism) barring the road to discussion and innovations. If the State can be said to have imposed a doctrine, this doctrine was not Ashʿarism; it was the traditionalist creed which went under the name of the caliph al-Qadir, and later under his name and that of his son al-Qa'im. But the 'State' supported the doctrine that had the support of the Muslim community through consensus. Van Berchem was right when he said that the 'State' supported the winning doctrine: his mistake was in assuming that this doctrine was Ashʿari's. If this were true, the Saljuq Tughril Beg would not have ordered the cursing of Ashʿari from the pulpits of Khurasan. Goldziher, aware of this policy, modified the view of van Berchem by stating that it was not the doctrine of Ashʿari, but rather that of the Ashʿaris. But that too was mistaken, for we find the Ashʿaris still struggling for legitimacy in the fourteenth century, long after the eleventh.[55]

To sum up: Many establishments of a permanent character were based on waqf, Islam's only form of perpetuity. There was no other choice for an establishment that was intended to survive its founder in perpetuity. Regarding students with room and board, we now know that the masjid with its nearby khan supplied the two essential elements of the madrasa. Two facts justify the masjid-khan complex as the precursor of the madrasa: (a) the first professor of the Nizamiya, Abu Ishaq ash-Shirazi, left such a complex in order to assume the

chair of fiqh at the Nizamiya;[56] (b) this was not an isolated case – other such complexes existed in other parts of Baghdad, and Badr b. Hasanawaih established an extensive network of such complexes in the previous century. Eche, apparently, was not aware of this complex described in an early study.[57]

The reader can readily see that the above analyses cover broad expanses of Islamic history. The so-called 'political madrasas' entail a discussion of the political scene in the fifth/eleventh century. This involves the relationship between caliph and sultan, the authority of the caliph as opposed to the power of the sultan, first as regards the Buwaihids, then the Saljuqs who replaced them. A discussion of the Saljuqs must take into consideration their wazirs, first ʿAmid al-Mulk al-Kunduri, wazir of Tughril Beg, then Nizam al-Mulk, who replaced him and held the post for thirty years under Alp Arslan and Malik-Shah (sultanate: 465-85/1072-92). Indeed, Nizam al-Mulk must be brought into the discussion, since so much has been made of the madrasas he established all over the realm, especially the one in Baghdad, seat of the caliphate and cultural centre of the Muslim World. The two Saljuq wazirs supported ulama of antagonistic ideologies: Kunduri supported Muʿtazilism, and Nizam, Ashʿarism, a situation necessitating discussion of the religious movements of the period and their relationship to Sunni orthodoxy. The discussion is further complicated by Goldziher's analysis of Sunnism into two orthodoxies, an old and a new one, as well as his dissection of Ashʿarism into two parts: that of its head, al-Ashʿari, and a later, truncated Ashʿarism.

Thus political history, religious history, as well as institutional history are all involved and must be unscrambled before one can hope to understand the significance of the madrasa and its place in history.

Appendix B

The best available source on colleges is Nuʿaimī's *Dāris* which treats of Damascus, giving data on 128 colleges of law for the four Sunni madhabs (61 Shafiʿi madrasas; 52 Hanafi; 11 Hanbali; and 4 Maliki) founded between c.490 and 892 (A.D. 1010-1487). (For Paris, Rashdall [*Universities*, I, pp.536 ff.] lists 70 colleges between 1180 and 1500 [A.H. 576-905]). It also gives data on the following institutions: dar al-qur'an (7); dar al-hadith (16); combinations of these two institutions (3); medical colleges (3); monasteries: ribats (21), zawiyas (26), turbas (79); and Mosques in Damascus and other Syrian towns (31). For colleges in other cities of Islam, see, for Baghdad, *ʿUnwān*, index, *MIL*, pp.17 ff., *Madāris*, pp.226 ff.; for Nishapur, *Patricians*, pp.249 ff. (no.6, Dar as-Sunna, should not be confused with the later dar al-hadith institutions; it rather suggests opposition to the dar al-ʿilm institution, the term sunna standing for the legitimate sciences, as contrasted with the foreign sciences of dar al-ʿilm; hadith was an ancillary science in all colleges of law); for Aleppo, *Professeurs*, pp.86 ff.; for various parts of the Islamic world, see *Ausbreitung*, pp.335 ff. (*'madāris* und *masājid'*). There are three studies now in the final stages of preparation with data on institutions in Egypt by Gary Leiser, and in Muslim Spain, by Kay Heikkinen and Michael Lenker.

NOTES AND REFERENCES

Chapter I
Institutions

1. *Esquisse*, 24; *Introduction*, 28.
2. See *EI*[2], s.v. fiqh, (by J. Schacht), II, 889b (lower portion)-890a.
3. *Islam*, 212.
4. *Khiṭaṭ*, II, 344.
5. See *EI*[2], III, 888a (last paragraph) and 890a (21ff.).
6. cf. *Introduction*, 6-7.
7. See *Ẓâhirîten*.
8. *Ma'ārif*, 248f., cited in *Ẓâhirîten*, 4 n.1.
9. *Aqālīm*, 37 (5, 7-8).
10. ibid., 38 (8-9).
11. ibid., 142 (11).
12. *Milal*, II, 45 (25-30), and 46 (15-16).
13. *Muqaddima*, 218 (line 1); = *Muqaddimah*, III, 5, cited in *Ẓâhirîten*, 5 n.3.
14. *Fihrist*, 225, cited in *Islam*, 209 n.3.
15. *Aqālīm*, 37.
16. *TSS*, II, 337.
17. *Aqālīm*, 37 (line 5).
18. *TFS*, 132-3.
19. ibid., 134.
20. ibid., 103.
21. 'Anhū akhadha 'l-Baghdādīyūn; akhadha 'anhū 'āmmatu shuyūkhi Baghdad, etc.; see ibid., 150, 97, *et passim*.
22. ibid., 78.
23. ibid., 79.
24. ibid.
25. ibid., 80.
26. ibid., 85.
27. ibid., 89.
28. ibid., 92.
29. *Wafayāt*, III, 280-1.
30. Sultanate: 658-76/1260-77.
31. *Khiṭaṭ*, II, 344.
32. Caliphate: 574-622/1180-1225.
33. Caliphate: 623-40/1226-42. Between an-Nasir and al-Mustansir, there was the brief Caliphate of az-Zahir in 622/1225.
34. *TFS*, 151; on the Zahirites of Baghdad, see *Ibn 'Aqīl*, 278ff.
35. See *Ash'arī* XVII (1962).
36. On Zahirism and qiyas, see *Ẓâhirîten* and *Grammaire*.
37. *Ibn 'Aqīl*, 280 and notes.
38. An exception to this general rule is found later, in the seventh/thirteenth century, in the work of an-Nu'aimi on the madrasas of Damascus, where three madrasas are designated for the study of medicine: as (1) al-Madrasa ad-Dakhwariya, founded in 621/1224; (2) al-Madrasa ad-Dunaisiriya, founded by the Shafi'i jurisconsult-physician 'Imad ad-Din ad-Dunaisiri (d.686/1287); and (3) al-Madrasa al-Lubudiya an-Najmiya, founded in 664/1266, by Najm ad-Din Ibn al-Lubudi, author of a work on medicine according to the scholastic method of jurisconsults; see *Method*, 659.
39. Dar al-Qur'an ar-Rasha'iya, see *Dāris*, I, 11.
40. *Muntaẓam*, VI, 133 (7-8); also, *TIS*, *apud Materials*, 98.
41. *Muntaẓam*, VI, 98; also, *Supplément*, s.v. *jls*.
42. *Muntaẓam*, VI, 145 (14-15).
43. See *LL*, s.v., where Lane explains *majlis* as elliptical for *ahl al-majlis*.
44. *Faqīh*, 484-5/II, 131 (ult.). This work has now been published in two arbitrarily divided volumes, edited by Shaikh Ismā'īl al-Anṣārī. The work in manuscript is divided into twelve

parts (juz'), and is paginated. The first number refers to the MS. pages; the second, to the printed edition. The latter appeared after the MS. had been used for this study.

45. *Supplément*, s.v. *majlis*.

46. *Aṭibbā*, 672.

47. cf. *Muntaẓam*, VII, 95.

48. cf. *Jawāhir*, I, 152; *Muntakhab*, fols.43a, 48a, 84a, *et passim*.

49. *Faqīh*, 10/I, 10.

50. ibid., 15/I, 14 (read here 'at-tafaqquh' with the MS., instead of the edition's 'al-fiqh').

51. ibid., 19/I, 17.

52. ibid., 481/II, 129.

53. *Sulṭānīya*, (= *Statuts*, 406), 182; cf. Abu Ya'la, 211.

54. See, for the Umaiyad Mosque, *TMD*, 84 (cites only six such zawiyas for law) and *Dāris*, II, 412 (cites eight); and for al-Jami' al-Atiq, *Khiṭaṭ* II, 255 (cites eight such zawiyas).

55. cf. *Turkey*, 133; for a recent concise statement on Muslim education in Turkey, see ibid., 132ff.

56. *Mu'īd*, 32: inna iqāmata jum'ataini fī baladin lā yajūzu illā li-ḍarūratin 'inda 'sh-Shāfi'ī wa-akthari 'l-'ulamā'.

57. For examples, see *MIL*, 5-7.

58. *Muntaẓam*, VII, 171 (12-18).

59. ibid., VII, 171 (18-21).

60. See *Irshād*, IV, 16.

61. ibid.; it should be noted that when the passive tense here (yu'dhan) was used, it was in reference to the caliph.

62. ibid.

63. *Muntaẓam*, VIII, 267 (ult.).

64. ibid., IX, 3-4, esp. p.4 (3-5).

65. ibid., X, 145: wa-qad ṭara lubbuh.

66. See, for instance, *Muntaẓam*, IX, 82: fa-ḥaḍara Ṭarrād b. Muḥammad min Bāb al-Baṣra fī 'z-zumrati 'l-'Abbāsīya . . . wa-jā'a Naqīb aṭ-Ṭālibīyīn al-Mu'ammar . . . fī zumrati 'l-'Alawīya.

67. ibid., IX, 106.

68. *Nuzha*, 56.

69. *TSS*, III, 130 (13): 'how could you give the halqa to someone with such a name'. The reference was to the ethnic name al-Jīlī, from Jīlān, meaning perhaps that the caliph should have given priority to local professors.

70. According to al-Mawardi, however, the caliph appointed the imam of a masjid.

71. *Inṣāf*, VII, 55.

72. *MIL*, 56 n.1.

73. *Supplément*, I, 317, s.v. *ḥalqa*.

74. *THY*, II, 153-5.

75. Abu 'l-'Abbas Aḥmad (d.401/1010; see ibid., 191), Abu Ishaq Ibrahim (d.445/1058, see *Muntaẓam*, VIII, 191).

76. *Muntaẓam*, VI, 390; for other such halqas, see op. cit., IX, 88-9, and *Irshād*, VII, 266-7.

77. *Muntaẓam*, X, 30-1.

78. ibid., IX, 8-9; for this type of halqa, see also *Wafayāt*, II, 361.

79. The text is in *Muntaẓam*, VIII, 319 and in *Irshād*, VIII, 266-7; kāna lahū ḥalqatun bi-Jāmi' al-Qaṣr yuftī fīhā wa-yuqri'u 'l-ḥadīth, wa-ḥalqatun bi-Jāmi' al-Qaṣr.

80. *Dhail*, I, 9 and 21.

81. *Muntaẓam*, VIII, 148.

82. *Shadharāt*, I, 159.

83. *Muntaẓam*, IX, 88-9: wa-lahū ḥalqatun fī 'l-fiqh wa 'l-fatwā wa'l-wa'ẓ.

84. ibid., IX, 165.

85. *Irshād*, VII, 45: kānat lahū ḥalqatun bi-Jāmi' al-Qaṣr yuqri'u fīhā 'l-adaba kulla jum'a.

86. For the details, see *L'Affaire*, 121f; *MIL*, 5 and n.1; *Ibn 'Aqīl*, 242-3.

87. *Wafayāt*, I, 52.

88. *Muntaẓam*, X, 125 (4 and 9).

89. For further details on the halqa, see *MIL*, 4-7.

90. Or by others, patrons, who contributed with the consent of the caliph; as was the case with Ibn 'Aqīl whose patron was the wealthy Hanbali merchant Abu Mansur b. Yusuf. See *Ibn 'Aqīl*, index, s.v. Abu Mansur b. Yusuf.

91. *Muntakhab*, fol.140a (line 1).

92. ibid., fol.145a-b.

93. *Muntaẓam*, IV, 127.

94. *Irshād*, XVI, 38.

95. *Wafayāt*, IV, 35.

96. *'Unwān*, 290; *LL*, s.v.
97. *Muntakhab*, fol.145a; *Khiṭaṭ*, II, 388.
98. *Nishwār*, II, 135; *Muntakhab*, fol.145a-b; *Wafayāt*, IV, 35; *Muḥāḍara*, II, 264.
99. *Dāris*, II, 411ff.; also, *TMD*, 82ff.
100. *LR* and *LL*, s.v. *sab'*.
101. cf. *Dāris*, I, 542 (5): jama'a 'alaihī 's-sab'a akhthara min 'ishrīna ṭāliban (more than twenty students collected the seven variant readings of the Koran under his direction).
102. For this Mosque, see *Khiṭaṭ*, II, 246-56.
103. This phrase may also mean, for the teaching of fiqh.
104. *Khiṭaṭ*, II, 394.
105. cf. n.56 above.
106. *Topography*, [32] and notes 6 and 7.
107. *Khiṭaṭ*, II, 277ff.
108. ibid., II, 273ff.
109. ibid., II, 316ff.
110. ibid., II, 328ff.
111. *Wafayāt*, V, 318ff.
112. *Muntaẓam*, VII, 227, VIII, 13-14.
113. ibid., VIII, 126 and 150.
114. *Irshād*, XI, 227.
115. *TFS*, 82.
116. ibid.; *Wafayāt*, I, 357.
117. *Jawāhir*, I, 197.
118. *Muntaẓam*, VII, 32, cf. *Shadharāt*, III, 16.
119. *Muntaẓam*, VII, 10-14, 129-30.
120. *Wafayāt*, III, 342.
121. *Muntaẓam*, VIII, 274-5.
122. ibid., VII, 301.
123. ibid., VIII, 212-13.
124. ibid., IX, 94-6; see also *Ibn 'Aqīl*, 415-18 for more details.
125. *Dhail (F)*, I, 213.
126. ibid., I, 364.
127. For Nishapur, see *Muntakhab*, *passim*, and *Patricians*, in the appendix for a list. For other masjids in Baghdad, see *MIL*, 17ff.
128. For example: the mosque-college of ash-Sharmaqani (d.451/1059; *Muntaẓam*, VIII, 212-13); that of Abu'l-Ma'adi as-Salik (d.496/1102; op. cit., IX, 136); that of Abu 'Abd Allah ash-Shirizī al-Wa'iz (d.439/1047; op. cit., VIII, 134), and that of Akhu Jumada (d.503/1109; op, cit., IX, 164).
129. *Muntaẓam*, VII, 237 (line 15); for Biographical notices see ibid., VIII, 11, *Shadharāt*, III, 199-200.
130. *Tārīkh*, X, 631.
131. *Shadharāt*, III, 221.
132. *Jawāhir*, II, 141; *MIL*, 18.
133. *Dhail (F)*, I, 212.
134. op. cit., I, 364.
135. *Dhail (P)*, fol.80b.
136. *Muntaẓam*, IX, 53 (15-21).
137. *Dāris*, II, 303-70; for the Masjid of Ibn ash-Shahrazuri, ibid., II, 316.
138. *Muntakhab*, fol.16b: al-masjid al-mubtanā fīhā.
139. ibid., fol. 114a: al-madrasa ad-dākhila fī 'l-masjid al-ma'rūf bih.
140. *TMD*, 118 (no.194); *Dāris*, II, 330 (no.194).
141. *TMD*, 119 (no.202); *Dāris*, II, 331 (no.202).
142. *TMD*, 121 (no.213); *Dāris*, II, 332 (no.213).
143. *TMD*, 121 (no.214); *Dāris*, II, 332 (no.214).
144. *TMD*, 121 (no.216); *Dāris*, II, 332 (no.212).
145. *TMD*, 122 (no.218); *Dāris*, II, 333 (no.218).
146. *TMD*, 123 (no.223); *Dāris*, II, 333 (no.222).
147. *TMD*, 124 (no.231); *Dāris*, II, 334 (no.230).
148. *TMD*, 124 (no.233); *Dāris*, II, 334 (no.232).
149. *TMD*, 124 (no.237); *Dāris*, II, 335 (no.236).
150. *TMD*, 123 (no.229); *Dāris*, II, 334 (no.228).
151. *TMD*, 132; *Dāris*, II, 338.
152. *TMD*, 149 (no.437), 151 (no.450), 151 (no.453), 151 (no.458).
153. *Nishwār*, I, 46: kuntu fī ba'ḍi 'l-mudun, wa-anā gharīb, fa-nazaltu fī khān; *Irshād*, XV, 76: lam yata-zauwaj qaṭṭ, wa-kāna yaskunu 'l-khānāt; *Dāris*, II, 203: wa-'ammara khānan bi-qaryati 'l-Ḥusainīya min Wādī Baradā 'alā

ṭarīq Ba'labakk wa-Tarābulus ya'wī ilaihī 'l-musāfirūn.
154. *'Unwān*, 105: the Ghurid Sultan Ghiyāth ad-Din b. Sam (d.599/1203) built several such inns on roads and in the deserts (banā ... 'l-khānāti fī 't-ṭuruqi wa 'l-mafāwiz).
155. *Nishwār*, II, 99: Baghdad had a khan on the Tigris which served as a warehouse for merchandise coming from al-Mauṣil.
156. *Dhail (Z)*, fol.40a: such was the case with the khan called Khan as-Suffa in the quarter of Suq ath-Thalatha' on Baghdad's left bank (kāna lahū dukkānun fī khān aṣ-Ṣuffa, bi-Sūq ath-Thalāthā').
157. *Muntaẓam*, VII, 288: waqafa 'alā 'l-jisri Khān an-Narsī bi 'l-Karkh.
158. See *FIT*, IV, 13-14.
159. *Takmila*, 182: khān bi-Suwaiqat Ghālib, 'inda qabr Ibn Suraij, waqf 'alā aṣḥābi 'ash-Shāfi'ī ilā 'l-yaum.
160. See page 29 below.
161. *Muntaẓam*, VIII, 150 (sub anno 443/1051-2): khān al-fuqahā' al-ḥanafīyīn bi-Qaṭī'at ar-Rabī'.
162. See the autobiographical note of one of these disciples regarding this khan, *Muntaẓam*, X, 37, and the translation in *MIL*, 54.
163. *Nishwār*, I, 46: fa-nazaltu fī khān, fa-kāna yakhtalifu ilaiya aḥdāthuhum wa-rijāluhum uqri'-uhumu 'l-fiqha fī ghurfatī.
164. See *Bibliothèques*. For the thesis Eche elaborated on the origin and development of the madrasa, and his treatment of the madrasa as a university, see pp.305ff. below.
165. See *TB*, XII, 74 (8). where, in speaking of Abu 'l-Hasan 'Ali b. Muḥammad al-Bazzāz (d.330/942), al-Khatib al-Baghdadi said that he had 'a house of learning': wa-kāna la-hū bait 'ilm; cited in *Materials*, 98 and n.4. In a verse by the poet Di'bil (d.c.175/791), the synonymous term *manzil al-'ilm* is found; see *Dīwān*, 89 and *Irshād*, XIX, 6.
166. See *Supplément*, s.v. *khizāna*, citing *Gharnāta* in reference to the library of the Almohad sultan Abu Ya'qub.
167. Caliphate: 198-218/813-33.
168. *EI*², s.v. *Bait al-Ḥikma* (by D. Sourdel). D. Sourdel has also written articles on *Dār al-Ḥikma* and *Dār al-'Ilm*, see ibid., s.v.
169. *Wafayāt*, III, 55-6; and *Irshād*, XV, 144: *khizānat ḥikma*. On al-Fath b. Khaqan, usually (and erroneously referred to as wazir, see *Vizirat*, I, 282ff.
170. *Nishwār*, IV, 66; *Irshād*, XV, 157: khizānat kutub 'aẓīma yusammīhā Khizānat al-Ḥikma.
171. *Irshād*, VII, 193: kānat lahū bi-baladihī dār 'ilm qad ja'ala fīhā khizānat kutub min jamī'i 'l-'ulūm.
172. *TB*, XII, 74 (8): kāna 'indahū bait 'ilm.
173. *Muntaẓam*, VII, 172, and VIII, 22.
174. *Aqālīm*, 413 (15ff.); emphasis added.
175. *Irshād*, XIII, 33-4.
176. *Muntaẓam*, X, 113 (18-20).
177. ibid., X, 248.
178. *Jawāhir*, I, 320.
179. *Irshād*, XII, 274.
180. *Dumya*, 179, 414.
181. *Irshād*, IX, 99: khazā'in al-kutub al-matnīya fī 'l-Islām.
182. *Irshād*, VII, 193: wa-idhā jā'ahā gharībun yaṭlubu 'l-adab, in kāna mu'siran a'ṭāhū waraqan wa-wariqan.
183. *Muntaẓam*, VII, 172, and VIII, 22.
184. ibid., VIII, 216.
185. ibid., IX, 42-3.
186. *Aqālim*, 413 (15ff.): wa-fī hādhihī abadan shaikhun yudrasu 'alaihī 'l-kalāma 'alā madhāhibi 'l-Mu'tazila.
187. Sultanate: 338-72/949-82. On Ibrahim b. Baks, cf. *GAS*, VII, 23 (4 from bottom), Ibrahim b. Bakkush.
188. *Aṭibbā'*, 341 (4-5 and 15-16): majlis al-'ilm al-muqarrar fī l-Bīmāristān al-Fāriqī; in speaking of a work by this physician entitled *Kitāb al-Bīmāristānāt* in the second

of its two parts, the author records answers given to questions posed by the students in this course in the hospital.
189. ibid., 323 (20-2).
190. For the section on waqf, see below pp.35ff.
191. See p.21 above.
192. *Muntaẓam*, VII, 101.
193. ibid., VI, 253.
194. ibid., VI, 320.
195. ibid., VII, 113ff.
196. ibid., VII, 179ff.
197. ibid., VII, 10-14.
198. ibid., VII, 12 (15): 'masjid Di'lij b. Aḥmad'.
199. ibid., VII, 129; its chair of law was once occupied by the Shafi'i master jurisconsult ad-Dariki (d.375/986).
200. For Badr's full name, see *Bidāya*, XI, 353: Nasir ad-Daula Abu 'n- Najm Badr b. Hasanawaih b. al-Husain al-Kurdi. The provinces under his jurisdiction included al-Jibal, Hamadhan, Dinawar, Burujird and Asadabad, among others.
201. For details, see *Muntaẓam*, VII, 271-2.
202. ibid., VII, 272 (5-6); see also *Shadharāt*, III, 174 (1-2), based on Ibn al-Jauzi's *Shudhūr al-'uqūd*; *Bidāya*, XI, 354 (10-11) where the text reads as follows: 'ammara fī aiyāmihī mina 'l-masājidi wa 'l-khānāti mā yunīfu 'alā alfai masjidin wa-khān (he built during his administration by way of masjids and khans a number of them well above two thousand).
203. *Muntaẓam*, X, 37; *MIL*, 54.
204. *Muntaẓam*, VIII, 150 (18-20).
205. *TB*, index, s.v.
206. cf. *Ibn 'Aqīl*, 196 (Isfara 'ini, d.406/1016); ibid., 172 (Damaghani, d.478/1085).
207. See *MIL*, esp. 31ff.
208. On the Madrasa Nizamiya and its first professorships, *MIL*, 31-48.
209. The innovations of Badr and Nizam consisted, not in the institutions they founded, but in founding them on such a wide scale.
210. The madrasa's cognate institutions were modelled more or less on the madrasa.
211. *Istituti*, I, 324; *FH*, III, 240 (ult.)-241 (1-18).
212. *FQ*, 286; *FḤ*, fol.136a (11-12).
213. *FS*, II, 99 (esp. line 22).
214. ibid., II, 152 (4ff. from bottom of page).
215. *Jawāhir*, I, 253.
216. ibid., II, 141.
217. ibid., I, 153.
218. ibid., I, 295.
219. See p.37 below.
220. See below, pp.40ff.
221. *Introduction*, 209.
222. cf. *MJ*, 306.
223. See *Inṣāf*, VII, 56.
224. *FIT*, 10-11, and *FITM*, 12-15.
225. *FH*, III, 237 (11-16).
226. See *FS*, II, 132 (1-2).
227. See *Spain*, 153-8. Santillana (*Istituti*, II, 444) mistakenly places the Shafi'is in the same category as the Malikis, makes the Hanafis the only school permitting the founder to reserve to himself the administration of the waqf, and says nothing of the Hanbalis.
228. cf. *Nishwār*, I, 128-30.
229. *Waqf*, 208.
230. *FIT*, IV, 11.
231. For other objects of waqf, see the section above on typology of institutions, *passim*.
232. *MLV*, 209.
233. *Minhāj*, 186: wa-laui 'qtaṣara 'alā 'waqftu' fa 'l-aẓharu buṭlānuh.
234. ibid.: idhā jā'a Zaidun fa-qad waqaftu (when Zaid comes I shall institute this waqf).
235. ibid.: wa-lau waqafa bi-sharṭi 'l-khiyāri baṭala 'alā-'ṣ-ṣaḥīḥ.
236. ibid.
237. ibid.
238. ibid., 184.
239. cf. *Waqf*, 207. More on this below, p.74, when dealing with the *cy près* doctrine.
240. *MJ*, 304.
241. *Muntaẓam*, X, 75.
242. ibid., VIII: taẓāhara 'n-nāsu bi 'l-amwāl.
243. See *Talbīs*, 121.
244. This was true not only of the

Middle Ages, where the sources abound with examples, but also in modern times. A. A. A. Fyzee writes that 'some people who desire fame by making foundations and endowments obtain property by shady means, amounting to extortion and exploitation'. See *MLF*, 233.
245. Caliphate: 295-320/908-32.
246. *Nishwār*, I, 128-30.
247. *Muntaẓam*, IX, 198-9.
248. ibid., IX, 239.
249. *Khiṭaṭ*, II, 386.
250. ibid., II, 416 (4 from bottom).
251. ibid., II, 411: Masjid adh-Dhakhira.
252. ibid., II, 364.
253. ibid., II, 292.
254. For the background of this scandal and the details of the case, see *Khiṭaṭ*, II, 402-3.
255. ibid., 407-8.
256. The Nizamiya's first appointed professor, Abu Ishaq ash-Shirazi, refused to perform his daily prayers on the grounds of the madrasa, because of the misappropriated character of its materials. These had been taken from some of Baghdad's riverside palaces. (*MIL*, 33.)
257. ibid., II, 408: wa-anta in am'anta 'n-naẓara wa-'arafta mā jarā, tabaiyana laka an mā 'l-qaumu illā sāriqan (instead of: *sāriqun*) min sāriq wa-ghāṣiban (instead of: *ghāṣibun*) min ghāṣib. Wa-in kāna 't-taḥarruju mina 'ṣ-ṣalāti li-ajli 'asfi 'l-'ummāl, wa-taskhīri 'r-rijāl, fa-shai'un ākhar. Bi 'llāhi 'arrifnī, fa-innī ghairu 'ārifin man minhum lam yasluk fī a'mālihī hādhā 's-sabīl; ghaira anna ba'-ḍahum aẓlamu min ba'ḍ.
258. On him see *Zankī*.
259. See *Dāris*, I, 614 (8-10).
260. For more details, and for Ibn al-Jauzī's chief motive in writing the work, see *Sufism*, 69-70.
261. *Mu'īd*, 28-9.
262. ibid., 34.
263. ibid.
264. ibid., 40-1.
265. ibid.: fa-'alaihī an lā yakhliṭahā . . . wa-illā . . . ṣāra 'l-kullu ḥarāman.
266. *Inṣāf*, 66-7.
267. ibid., 67.
268. ibid.
269. *F'A*, II, 328.
270. *FK*, fol.132b (8ff.).
271. See pp.47ff. below.
272. These two terms are hereinafter used interchangeably, mutawalli being more frequent.
273. *Inṣāf*, VII, 62; *Waqf*, 204.
274. *FA*, 222 (bottom of margin); *FIN*, 96.
275. See *FA*, 221.
276. ibid., 261 (15-16).
277. ibid., III, 265 (6-9).
278. *MIL*, 34.
279. cf. his work *Tanbīh*, 13, 'Prayer on misappropriated grounds is not permitted' (lā taḥillu 'ṣ-ṣalātu fī arḍin maghṣūba); for French translation, see *Admonition*, I, 33.
280. *MIL*, 34.
281. Mardawi quoted from Abu Ya'la's work, whose name he does not mention, not from the work of the same title by al-Mawardi: see *Aḥkām*.
282. *Inṣāf*, VII, 62.
283. cf. *FIN*, 96-7.
284. *Apud FS*, II, 152 (15-16).
285. Mahmud b. Sa'id b. 'Ubaid Allah al-Harithi, (d.606/1209), author of *Tafhīm at-taḥrīr li-naẓm jāmi' al-kabīr*; see *Inṣāf*, op. cit., loc. cit., and *Dhail*, I, 142, and n.2.
286. *Inṣāf*, VII, 62.
287. *FQ*, 290.
288. *FA*, 221 (margin).
289. Anqarawi uses both terms, nazir and mutawalli, for the post of trustee.
290. *FA*, 232.
291. ibid., 232.
292. *FQ*, 308.
293. *FS*, II, 150; *Inṣāf*, VII, 67.
294. *FR*, 122.
295. ibid., 67-8.
296. *FIT*, IV, 2.
297. *FITM*, XXXI, 67-9: innamā dhāka takhyīru maṣlaḥa, lā takhyīru shahwa.
298. *Inṣāf*, VII, 57.
299. *FH*, III, 290 (ult.)-291 (1-3).
300. *FIN*, 92.

301. *FH*, III, 265 (4-6).
302. *Mu'īd*, 90.
303. *FQ*, 290.
304. ibid., 308.
305. *FA*, 226 (lower half).
306. *FQ*, 303.
307. ibid., 304.
308. *FIN*, 95.
309. *FA*, 223-4.
310. *FQ*, 303; *FS*, II, 133; the qadi of the town in which the waqf is located.
311. *Inṣāf*, VII, 60 (4-5).
312. ibid., VII, 64.
313. ibid., VII, 60, 69-70.
314. *FQ*, 320.
315. *Apud Inṣāf*, VII, 64 (19-20): lā yajūzu li-wāqifin sharṭu 'n-naẓari li-dhī madhhabin mu'aiyanin dā'iman.
316. For details and the development of this thesis, see *Ash'arī*.
317. *FQ*, 290.
318. Qadi-Khan's statement regarding a definite number of men, a committee, with the prerogative of appointing the mutawalli, is corroborated historically by the earlier Ibn al-Banna' (d.471/1079) in his *Diary*; see next paragraph here.
319. See *Diary*, §136: ajlasū Abā Ṭālib akhā Naqīb an-Nuqabā' fī 'l-mauḍi'i 'lladhī kāna fīhī Ilyās.
320. See *Diary*, §142: 'abara qāḍī 'l-quḍāt ilā qabr Abī Hanīfa li-yujlisa Abā Ṭālib akhā Naqīb an-Nuqabā'wa-ma'ahū jamā'a.
321. *Muntaẓam*, x, 11 (4-6).
322. Two passages point to the existence of a committee of overseers for the administration of a waqf, at least as regards the Hanafi madhab; see the fatwa of Qadi-Khan, note 317 above, and Ibn al-Banna''s statement in his *Diary*, note 319 above.
323. *FS*, II, 154.
324. *FITM*, XXXI, 66.
325. *Inṣāf*, VII, 59.
326. *FIN*, 96.
327. *Inṣāf*, VII, 58-9.
328. ibid., 59.
329. *Inṣāf*, 60 (1-3).
330. ibid., 60 (7ff.).
331. *Muntakhab*, fol.18a (17-18); the text adds: wa-qa'ada li't-tadrīsi wa' n-naẓar, (and he assumed the chair to teach law and disputation).
332. *Inṣāf*, VII, 61.
333. ibid., VII, 61.
334. *FQ*, 332.
335. *Mu'īd*, 78.
336. *Sulṭānīya*, 67, *Statuts*, 144, *Judiciaire*, I, 55.
337. *FQ*, 295.
338. *FIN*, 88.
339. *FQ*, 295.
340. ibid.
341. *FS*, II, 41 (ult.)-42 (1).
342. *FIN*, 93.
343. *FA*, 222.
344. *FH*, III, 265 (27-32).
345. ibid., VII, 63.
346. *FITM*, XXXI, 65.
347. *FQ*, 296.
348. *Sulṭānīya*, 78, *Statuts*, 170; cf. Abu Ya'la, 62.
349. *Sulṭānīya*, 93-4, *Statuts*, 200.
350. *Inṣāf*, VII, 57-8.
351. *FIN*, 87.
352. *FQ*, 285: li 'l-qaiyim an yaf'ala mā fī tarkihī kharābu 'l-masjid.
353. *FT*, 193.
354. *Inṣāf*, VII, 68.
355. This term also signifies a charge agreed upon for bringing back a fugitive slave; it has the meaning of the French *forfait, prix forfaitaire*. cf. *Supplément*, s.v. and *LR*, s.v.
356. In *Durar*, IV, 333.
357. *FS*, II, 52.
358. *Inṣāf*, VII, 65 (12-13).
359. *FQ*, 307: jāza, wa-yabra'u 'ani 'd-ḍamān.
360. ibid.: lau khalaṭa min mālihī mithla tilka 'd-darāhimi bi-darāhimi 'l-waqf, kāna ḍāminan li 'l-kull.
361. *FH*, III, 266 (7-12).
362. cf. p.58 above.
363. *Inṣāf*, VII, 68.
364. ibid.
365. *FIN*, 96.
366. *FH*, III, 222 (17-24).
367. ibid., III, 269 (6 from bottom)-270 (1-7).
368. *FIT*, IV, 8-9; *FITM*, XXXI, 15-17.

369. See *FS*, II, 485-7.
370. *FIT*, IV, 10-11; *FITM*, XXXI, 12-15.
371. *Inṣāf*, VII, 69.
372. *FH*, III, 259 (10-15).
373. *Inṣāf*, VII, 66.
374. See his *Talbīs*, 121.
375. *FH*, III, 227 (lower third).
376. ibid.: see also *Iḥyā'*, II, 151ff., and the commentary in *Itḥāf*, VI, 154ff.
377. cf. *FS*, II, 55.
378. *FN*, 78.
379. *FIT*, IV, 11; *FITM*, XXXI, 95.
380. *FQ*, 310.
381. *FIT*, IV, 17.
382. *FITM*, XXXI.
383. *TSS*, V, 253 (4).
384. See, for example, *FH*, III, 267 (4-11).
385. *FA*, 226; *F'A*, II, 305.
386. *Inṣāf*, VII, 53-4; also *FH*, III, 256 (ult.)-257 (1-2); *FF*, fol.39b; *FY*, fol.79a; *FITM*, XXXI, 66-7; *FIT*, IV, 9.
387. *FF*, fols.44b-45a.
388. *Inṣāf*, VII, 73.
389. *FITM*, XXXI, 71.
390. *FH*, III, 263 (24-32); cf. *FIN*, 94.
391. Ibn Taimiya's opinion here seems to be in conflict with the previous one on p.66 below, where priority was given to staff over students. But the facts of the former case may not have been stated fully.
392. *Inṣāf*, VII, 64-5.
393. ibid., VII, 65.
394. *FR*, 132; *FLM*, fol.66b.
395. *FA*, 235 (antep.): fa-lā ya'khudhu mina 'l-waẓīfati shai'an; and ibid., (line 5 from bottom): fa-lā ba'sa lahū an ya'khudha 'l-waẓīfa, li-annahū muta'allim, wa 'l-kitābatu min jumlati 't-ta'allum.
396. *FK*, fol.132b (8ff.).
397. *FK*, fol.132a (23ff.)-132b (8).
398. See *FS*, I, 485-7.
399. ibid.
400. ibid., II, 58 (17-22).
401. *Inṣāf*, VII, 58-9.
402. ibid., VII, 53-4.
403. ibid., VII, 53-4.
404. *FF*, fols.58b-59a.
405. *FA*, 235.
406. *FF*, fol.75b.
407. *FIT*, IV, 2.
408. *FQ*, 285.
409. *FN*, 78.
410. ibid., 307.
411. *FITM*, XXXI, 206-7.
412. *FH*, III, 240 (15-22).
413. ibid., III, 260 (11-15), and 262.
414. *FIN*, 94.
415. *FH*, III, 227 (lower third): idhā 'ndarasa sharṭu 'l-wāqif, ju'ila bainahum bi 's-sawīya.
416. ibid., III, 262 (19-24).

Chapter 2
Instruction

1. *Aṭibbā'*, 327.
2. ibid. Ibn Butlan names seventeen intellectuals, classifying them under the three divisions, five for each of the first two, and seven for the third, as follows: al-Ajall al-Murtada (see *Ibn 'Aqīl*, 283 and n.2 for bibliography; b. 355/966, d.436/1045); Abu 'l-Husain al-Basri (ibid., 171 n.4; d.436/1085); Abu 'l-Hasan al-Quduri (ibid., 168 and n.2; d.428/1037); Aqda 'l-Qudat al-Mawardi (ibid., 221 and n.4; d.450/1058); Abu (not: Ibn) 't-Taiyib at-Tabari (ibid., 202 and n.4; b.348/959, d.450/1058); the foregoing intellectuals belong to the obvious division of the Islamic sciences which Ibn Butlan leaves unidentified. The following intellectuals are listed under the 'Sciences of the Ancients', 'ulum al-qudama': Abu 'Ali b. al-Haitham (d.430/1039; see *GAL*, I, 469, Suppl. I, 851); Abu Sa'id al-Yamami; Abu 'Ali b. as-Samh; Sa'id at-Tabib; Abu 'l-Faraj 'Abd Allah b. at-Taiyib, (d.435/1043; *GAL*, I, 482; Suppl. I, 884). The literary arts, under which the following intellectuals are listed, are called 'ulum al-adab wa-adab al-katib, 'the literary sciences and the art of the secretary': 'Ali b. 'Isa ar-Raba'i (d.420/1029; see *GAL*, Suppl. I, 491, and *Muntaẓam*, VIII, 46); Abu 'l-Fath an-Nisaburi; Mihyar ash-

Sha'ir (*Ibn 'Aqīl*, 401 n.2, d.428/1037); Abu 'l-'Ala' b. an-Nazik; Abu 'Ali b. al-Musilaya (*Muntaẓam*, VIII, 90; d.427/1036); ar-Ra'is Abu 'l-Husain (not: Hasan) as-Sabi (*Ibn 'Aqīl*, 15 and n.2; b. 359/969, d.448/1056); Abu 'l-'Ala' al-Ma'arri, (d.449/1057; *GAL*, I, 356, Suppl. I, 449, *Muntaẓam*, VIII, 184-8).

3. *Irshād*, V, 139.
4. *Wafayāt*, II, 104.
5. *Irshād*, XVII, 174.
6. See pp.265-6 below.
7. *GAL*, two volumes and three voluminous Supplements.
8. *GAS*, several volumes.
9. *Dāris*, I, 28: yatakallamu 'alā 'l-ḥadīthi bi-kalāmin majmū'in min 'ulūmin shattā mina 'ṭ-ṭibb, wa 'l-falsafa, wa-'ilmi 'l-kalām . . . wa-'ilmi 'l-Awā'il.
10. *Nuzha*, 55.
11. ibid.: an-naḥw ma'qūlun min manqūl, kamā anna 'l-fiqha ma'qūlun min manqūl.
12. *Kashf*, I, 11.
13. *FH*, III, 254 (4-5).
14. ibid., III, 254 (15).
15. *Kashf*, I, 23.
16. ibid., I, 23.
17. See *Irshād*, XVII, 304.
18. *Apud ibid.*, XVII, 139-40.
19. *Muntaẓam*, VII, 278-9: wa-yahḍuru 'indahū 'sh-shaikhu 'l-kabīru wa-dhū 'l-haiba, fa-yuqaddimu 'alaihī 'l-ḥadatha [not: al-hadītha] li-ajli sabqih.
20. ibid.
21. *Wafayāt*, II, 375.
22. *Muntaẓam*, X, 37.
23. *Shadharāt*, III, 363: Abu 'l-Hasan 'Ali b. Faddal al-Mujashi'i al-Qairawani; *GAL*, Suppl. I, 157, 200.
24. *GAL*, I, 387, Suppl. I, 669, d.462/1069, wrote *Ṭarīqat al-khilāf bain ash-Shāfi'īya wa'l-Ḥanafīya ma'a dhikri 'l-adilla li-kulli muhimma* (MS. in Cairo).
25. *Dhail*, I, 230ff.; *Dhail* (*F*), I, 192ff.: wa-qara'a 'l-farā'iḍ, wa 'l-ḥisāb, wa 'l-jabr, wa 'l-muqābala, wa 'l-handasa, wa-bara'a fī dhālik; also *Muntaẓam*, X, 93.
26. I, 761, 762.
27. *Dhail*, 231; *Dhail* (*F*), I, 193.
28. See also *Ibn 'Aqil*, 237, n.1.
29. *Irshād*, XVI, 234-5.
30. ibid., XV, 79.
31. *Muntaẓam*, X, 22: kāna 'āriyan min 'ulūmi 'sh-sharī'a, wa-lam yanfuq illā 'alā 'l-juhhāl.
32. *Irshād*, XV, 259: yanbaghī li 'l-'ālimi an yakūna 'indahū kullu shai'; fa-inna li-kulli nau'in ṭāliban.
33. See his biographical notice in *Aṭibba'*, 683ff.
34. No doubt the one by Ibn Qutaiba. For other works by the same title, see *Kashf*, 469-70.
35. ibid., 211-13.
36. ibid., 1451-2.
37. See *'Unwān*, 11-12, 219, 297. Ibn Fadlan, Jamal ad-Din Abu 'l-Qasim Yahya b. 'Ali b. Baraka (d.595/1199), jurisconsult, professor of law, was especially known for his expert knowledge of dialectic and disputation; see ibid., 11-12, and *Dāris*, I, 227.
38. ibid., 688.
39. Here the biographer quoted a letter he sent to 'Abd al-Laṭīf, and a letter from the latter to the biographer's father; see ibid., 690-1.
40. *Muntaẓam*, X, 73 (7-12); on line 11, read 'yadurru 'alaiya', instead of the manuscript's 'yadrī 'alā').
41. Ibn Abi Muslim al-Faradi (d.406/1016) seated his students according to their knowledge regardless of age; ibid., VII, 278-9.
42. *Funūn*, 707.
43. *Wafayāt*, II, 315.
44. *Aṭibbā'*, 462.
45. *Wafayāt*, III, 7.
46. *FS*, II, 62-3 and 126-7.
47. *FH*, III, 253-5.
48. *FIS*, fol.62a.
49. See his *Muntaẓam*, X, 144.
50. *FF*, fol.40a.
51. *Dāris*, I, 194 (16-17).
52. *Irshād*, XVII, 177.
53. *FITM*, XXXI, 203.
54. *FIS*, fol.66a.
55. *FR*, fol.101a-b.
56. *FF*, fol.42b.
57. *Kashf*, 39.

58. *Irshād*, XVII, 306.
59. *Dhail*, I, 217 (13-14).
60. ibid., 21 (11-12).
61. *Wafayāt*, II, 240-2. He passed his first ten years with Malik as a student, but apparently not as a fellow (sahib).
62. ibid., III, 23.
63. *Dhail*, I, 21 (7-9), *apud* al-Qadi Abu 'l-Husain b. al-Farra', son of Abu Ya'la.
64. ibid., 172-3, according to Ibn 'Aqil's autobiographical notes.
65. *Muntakhab*, fol.71b and *Ansāb*, s.v. 'Arghiyānī' (and in the edition of Hyderabad, I, 168).
66. *Wafayāt*, I, 84-7.
67. *Irshād*, v, 102, Ma'mun's caliphate: 198/813 to 218/833.
68. *TSS*, III, 12-13.
69. *Muntaẓam*, VIII, 198.
70. *Lands*, 431.
71. *Muntaẓam*, x, 182.
72. On Ibn Banna', *Diary*, Introduction.
73. *Wafayāt*, I, 10.
74. *Muntakhab*, fol.36a (19-20); *Ibn 'Aqīl*, 204-6.
75. *Wāfī*, I, 132; for Ibn Razzaz, see *MIL*, 43.
76. *Muntaẓam*, x, 37; *MIL*, 54.
77. *Muntakhab*, fol.145a.
78. *Wafayāt*, II, 300.
79. ibid., III, 324-5.
80. ibid., III, 190-1.
81. ibid., v, 194-7. On the travel of Spanish Muslim scholars for study to the Muslim East, see the forthcoming Ph.D. Thesis (University of Pennsylvania, Oriental Studies) of Michael Lenker; on education in tenth-century Muslim Spain, see the forthcoming Ph.D. Thesis of Kay McKay-Heikkinen (Harvard, Romance Languages).
82. Biographical notice in ibid., I, 227ff.: he was killed by al-Hajjaj.
83. See *Wafayāt*, III, 376.
84. ibid.
85. *Wafayāt*, II, 136f.
86. *Nishwār*, IV, 246-7; *Muntaẓam*, VII, 25.
87. ibid., VII, 213.
88. *Nishwār*, IV, 211; *Muntaẓam*, VI, 312.
89. *Irshād*, II, 163.
90. *TSS*, IV, 103 (9ff.).
91. *Muntaẓam*, IX, 160.
92. *Jawāhir*, I, 172.
93. *Muntaẓam*, x, 140; kāna ummīyan la yaktub.
94. *Dhail*, I, 359-60: kāna ta'līquhū 'l-khilāfa 'alā dhihnih.
95. The Fatiha, first chapter of the Koran, is composed of seven short verses, recited by a Muslim as easily as the Lord's prayer is recited by a Christian. On az-Zahir, see *Irshād*, VIII, 101.
96. *Durar*, I, 160 (14-16): mā ra'aitu asra'a 'ntizā'an li 'l-āyāti 'd-dāllati 'alā 'l-mas'alati 'llatī yurīduhū minh, wa-lā ashadda 'stiḥḍāran li 'l-mutuni wa-'azwihā minh; ka-anna 's-sunnata nuṣba 'ainaih, wa-'alā ṭarafi lisānih. Ibn Taimiya was imprisoned and writing materials were made scarce for him. It appears that he wrote his autograph treatise on istihsan without a library, while in prison. See *Istiḥsān*, in *AISG*, 446-79.
97. *Dāris*, I, 163 (13).
98. *Durar*, IV, 109: kāna kathīra 'li 'stiḥḍār; cf. *Shadharāt*, VI, 247.
99. *Dāris*, I, 173-4.
100. *Muntaẓam*, x, 166: kāna maḥfūẓuhū qalīlan, fa-kāna yuraddidu mā yaḥfaẓuh.
101. See p.189 below.
102. *Dhail* (*P*), fol.125a: lam yakun yafhamu shai'an.
103. *Irshād*, XIX, 51.
104. *Faqīh*, 440-1/II, 100.
105. ibid., 442-3/II, 101 (6-7).
106. ibid., 445-6/II, 103-4.
107. ibid., 447/II, 104.
108. ibid., 450/II, 106.
109. ibid., 451ff./II, 107ff.
110. *Muntaẓam*, IX, 7 (19ff.): kāna yu'īdu 'd-darsa fī bidāyatihī mi'ata marra.
111. ibid., IX, 167 (10-12): kāna yu'īdu 'd-darsa fī 'btidā'ihī bi-Madrasat Nīsābur 'alā kulli mirqātin . . . marra, wa-'kānati 'l-marāqī sab'īn.
112. ibid., x, 143: idhā lam tu'idi 'sh-shai'a khamsīna marratan lam yastaqirra.

113. ibid., IX, 12 (22ff.): kuntu ākhudhu 'l-mukhtaṣarāti . . . fa-anẓuru fī 'l-juz'i wa-u'īduh, wa-lā aqūmu illā wa-qad ḥafiẓtuh.
114. *TSS*, IV, 103; cf. p.100 above.
115. *Irshād*, XVIII, 75.
116. Cited in *Jāmi'āt*, 180.
117. *Aṭibbā'*, 691: wa-idhā qara'ta kitāban fa-'ḥriṣ kulla 'l-ḥirsi 'alā an tastaẓhirahū wa-tamlika ma'nāh;; wa-tawahham anna 'l-kitāba qad 'adim, wa-annaka mustaghnin 'anhū la taḥzanu li-faqdih.
118. See *LL* and *Supplément*, s.v. *dhākara*.
119. *Irshād*, II, 123-4.
120. ibid., XVII, 62, where another *mudhākara* of poetry is cited.
121. ibid., XVIII, 56: qad dhākartuhu fa-aghrabtu 'alaihī khamsatan wa-thamānīna ḥadīthan, wa-aghraba 'alaiya thamāniyata 'ashara ḥadīthan.
122. ibid., XVIII, 57; also, ibid., II, 142-3.
123. *Muntakhab*, fol.26b: Abū Mas'ūd ar-Rāzī . . . al-mudhākir bi-gharā'ibihā (that is, gharā'ib al-ḥadīth).
124. *Wafayāt*, I, 179-80: aḥfaẓu sab'īna alfi ḥadīth, wa-udhākiru bi-mi'ati alfi ḥadīth.
125. *Faqīh*, 478-9/II, 128 (3-4).
126. ibid., 479/II, 127 (13). The assumption here is that the student writes from memory only when he knows the text perfectly, checking it afterwards.
127. ibid., 480/II, 128 (2).
128. *Irshād*, XVII, 313.
129. *Shadharāt*, I, 246: lam yakun la-hū kitāb, fa 'dṭaraba ḥadīthuh.
130. *Muntakhab*, fol.136a.
131. ibid., fol.137a (12).
132. *Nishwār*, IV, 74.
133. *Ṣaḥāba*, 125; cited in *Origins*, 95.
134. Caliphate: 99-101/717-20.
135. ibid.
136. *TFS*, I; emphasis added.
137. ibid., 19 (5).
138. ibid., 34 (2).
139. ibid., 78 (14ff.).
140. ibid., 91-2; for more details and the correct date of death, see *TSS*, II, 176ff., and *Shadharāt*, III, 51-2.
141. ibid., 92.
142. ibid., 94.
143. *TSIK*, fol.84b; also, *Muntaẓam*, VII, 5.
144. *Jawāhir*, I, 339.
145. ibid., II, 209.
146. ibid., II, 370; *Muqaddima*, 223; *Dialectique*, 119. For manuscript copies of aṭ-Ṭarīqa ar-Raḍawīya in Cairo and Munich, see *GAL*, I, 375, Suppl. I, 641.
147. Arabic MS. Ẓāhirīya Library, Damascus, *uṣūl al-fiqh*, 78, 79; and Garrett Collection, Princeton University, Arabic MS. 1842.
148. *Wāḍiḥ*, I, fol.61a-b.
149. *Irshād*, XI, 284. The text here is made clear by the use of the word shahna' (hatred, enmity, rancour) and the context in general. Ibn al-'Arif, on hearing that Abu 'l-'Ala''s book *al-Fuṣūṣ* (gems, precious stones) fell into the sea along with the page-boy who was carrying it, quipped in a verse that such is the case with anything heavy (*thaqīl*) . . ., it sinks: qad ghāṣa fī 'l-baḥri kitābu 'l-Fuṣūṣ/wa-hākadha kullu thaqīlin yaghūṣ. The word heavy means also dull, slow-witted. Abu 'l-'Ala''s retort was that the book simply went back to its place of origin (ma'din), where all pearls are found ('āda ilā ma'dinihī innamā/tūjadu fī qa'ri 'l-biḥāri 'l-fuṣūṣ); ibid.
150. *Nishwār*, II, 337; *Irshād*, XI, 37.
151. ibid., IV, 144-5.
152. *Aṭibbā'*, 216 (9).
153. *Kashf*, 721: 'ilm al-khilāf, wa-huwa 'l-jadalu 'lladhī huwa qismun mina 'l-manṭiq; illā annahū khuṣṣa bi 'l-maqāyīsi 'd-dīnīya.
154. For more details on *qara'a*, see below, Chapter III, under Shaikh al-qirā'a.
155. Each of the two periods did not deal exclusively with one set of materials; the undergraduate was introduced to disputation and the disputed questions, and the graduate continued to concern himself with the basic principles of his school.
156. *Wafayāt*, I, 358-9.

157. *Muntaẓam*, VI, 350 (14).
158. ibid., VI, 350 (17-18).
159. *Apud Dhail*, I, 109 (14-15).
160. *Inbāh*, I, 120: kāna yatakallamu fī daqa'iqi 'n-naḥwi bi-majālisi 'n-naẓar, wa-yunbiṭu 'l-masā'il.
161. *Shadharāt*, I, 276: ḥalqatun ... li 'l-fatwā wa 'l-munāẓara, wa-kāna ... yulqī masā'ila 'l-khilāfi darsan.
162. These works usually referred to questions put to jurisconsults by Muslims asking for legal opinions; such questions were often the occasion for disputation among jurisconsults.
163. See below, pp.122ff.
164. *Kashf*, 1113, s.v.
165. *Aṭibbā'*, 470.
166. Tenure: 596-617/1199-1220; see *GAL, Suppl.* I, 921.
167. *Dhail* (*F*), II, 314 (11).
168. *Kashf*, I, 242.
169. *Method*, 653-4.
170. *Dhail* (*F*), I, 351 (6-7): 'allaqa 'anhū min ta'līqi Abī-l-Faḍl al-Kirmānī.
171. *Apud Shadharāt*, IV, 284.
172. ibid.: wa-lahū ta'līqatun jummatu 'l-ma'ārif.
173. *Dhail*, II, 39 (1-2).
174. Ta'liq is the infinitive noun, masdar, of the verb 'allaqa, signifying the activity itself; ta'liqa, a substantive, signified the product, i.e., the notes, the treatise.
175. *Dhail* (*F*), I, 351 (8): wa-ḥafiẓa kathīran min masā'ili 't-ta'līq.
176. *Dhail*, I, 143-4.
177. *Wafayāt*, II, 341-3.
178. *TFS*, 105: ḥadartu majlisahū wa-'allaqtu 'anh.
179. ibid., 112: huwa auwalu man 'allaqtu 'anhū bi-Fīrūzābād.
180. ibid., 113: 'allaqtu 'anhū bi-Shīrāz wa-Ghandajān.
181. *Apud Shadharāt*, III, 384: 'allaqtu 'anhū 'l-fiqha sinīn.
182. cf. below, p.174, the anecdote in the biographical notice of Shams ad-Din al-Kufti.
183. *Muntaẓam*, VI, 149-50.
184. *Wafayāt*, III, 334-5.
185. ibid., I, 178-9.
186. On Marwazi, see *Shadharāt*, II, 355-6; disciple of Ibn Suraij; leading Shafi'i jurisconsult of his day; highly successful professor of law; but nothing is said of his activity with regard to ta'liq, or the elaboration of disputed questions.
187. *Wafayāt*, I, 358.
188. ibid., I, 358-9; see also *TFS*, 94.
189. ibid.: *Kitāb al-Muḥarrar fī 'n-naẓar*; *Kitāb fī'l-jadal*.
190. ibid., 103; *Wafayāt*, I, 55-6; see also p.121 below.
191. *Muntaẓam*, VIII, 5 (6).
192. ibid., VIII, 15: ṣannafa ta'līqatan mashhūra; *Jawāhir*, II, 24.
193. *TFS*, 108; *Wafayāt*, I, 57.
194. *Muntaẓam*, IX, 13: wa-abūhū ṣāḥibu 't-ta'līqa. For a notice on the father, see ibid., VIII, 17.
195. *TFS*, 108: wa-lahū 'anhū ta'līqatun tunsabu ilaih ([Bandanījī] has a ta'liqa which is attributed to him [produced under the direction of al-Isfara'ini]).
196. ibid., 109: wa-lahū 'anhū ta'līqa.
197. In the Collection of Ahmet III, no.850, entitled *at-Ta'līqa al-kubrā*; see *Ibn 'Aqīl*, 204 and n.2. *TSS*, III, 195, has excerpts of it.
198. *Shadharāt*, III, 284-5.
199. ibid., III, 292.
200. *Shadharāt*, III, 310.
201. On Shirazi's ta'liqa, see the statement of one of his disciples, Abu 'Ali al-Farisi, cited in *Muntaẓam*, X, 37 (12-13). On Shirazi's teachers, see, for Baidawi, *TFS*, 105; for Muhammad ash-Shirazi, ibid., 112; for Ghandajani, ibid., 113. On Shirazi, see *Ibn 'Aqīl*, 204, and n.4 for bibliography, and on his teacher Tabari, ibid., 202 and n.4 for bibliography.
202. See pp.121-2 below.
203. *Dhail*, I, 94.
204. See n.222 below.
205. *Kashf*, 107, s.v. *Iṣṭilām*.
206. ibid., 423.
207. By Muhammad Hasan Hitu, Damascus, 1390/1970.
208. *Muntaẓam*, X, 13.
209. *Kashf*, I, 424.

210. ibid.: it has a commentary by Taqi ad-Din Abu 'l-Fath, who was known as al-Mu'tazz.
211. The introduction is translated in section e. below.
212. ibid., 424.
213. *Dhail (F)*, II, 67 (1).
214. *Tarājim*, 84.
215. *Dhail (B)*, s.v. *ta'liqa*.
216. *Dāris*, I, 61. Ta'liqas were written throughout this period and beyond it; they constitute a genre of legal literature that deserves monographic study.
217. *Shadharāt*, III, 178; *Kashf*, I, 423.
218. ibid.
219. *Shadharāt*, III, 178 (17-18), according to Ibn Qadi Shuhba: fī khamsīna mujalladan dhakara fī-hā khilāfa 'l-'ulamā'i wa-aqwālahum wa-ma'ākhidhahum wa-munāzarātihim . . . fī jūdati 'l-fiqhi wa-husni 'n-naẓar.
220. *Kashf*, I, 423.
221. *Irshād*, XIII, 221-2.
222. The work of Abu 'l-Muzaffar as-Sam'ani (d.489/1096), written in refutation of the Hanafi jurisconsult ad-Dabusi (d.430/1039), and entitled *al-Iṣtilām fī 'r-radd 'alā Abī Zaid ad-Dabūsī* not extant; *Kashf*, I, 107, s.v. *Iṣtilām*.
223. As'ad al-Mihani, Shafi'i jurisconsult, professor at the Nizamiya of Baghdad. See p.120 above.
224. The text has 'al-'Amili'; but see *Muntaẓam*, x, 226 where Ibn al-Jauzi cites this work and its author; see also p.120 above.
225. See p.120 above: *an-Naẓīf min ta'līq ash-Sharīf* by the Hanbali Ghulam Ibn al-Muna.
226. cf. *Mu'allafāt*, 39-40.
227. cf. ibid., 92 and 188.
228. cf. ibid., 123-4.
229. *Bāz*, MS. Köprülü, fol.19a, and MS. al-Qādirīya, fol.1a.
230. *Dhail (F)*, II, 420 (4): wa-huwa ta'līquhū fī 'l-fiqhi kabīr.
231. ibid., 418 (18): wa-hiya 't-ta'līqatu 'l-wusṭā.
232. ibid., 418 (18-19): wa-hiya 't-ta'līqatu 'ṣ-ṣughrā.
233. *Shadharāt*, I, 126.
234. *TNZ*, 77: kāna Kitāb Sibawaih yuta'allamu minhū 'n-naẓaru wa 't-taftīsh.
235. *Shadharāt*, I, 275-6.
236. ibid., I, 277.
237. *Nuzha*, 38.
238. *Inbāh*, II, 313.
239. *TNZ*, 153-4.
240. *Shadharāt*, II, 44: lā ya'rifu 'n-naḥw, fa-yalḥanu laḥnan fāḥishan.
241. *Inbāh*, II, 39; ibid., II, 92.
242. ibid., I, 120.
243. *Inbāh*, I, 102.
244. *TNZ*, 239-40.
245. *Inbāh*, III, 325; *Shadharāt*, III, 17.
246. *TNZ*, 132.
247. See note 280 below.
248. ibid., 129-30.
249. *Inbāh*, II, 295-6.
250. *Inbāh*, II, 388: lam yakun li 'l-'Abdī . . . anasatun bi-shai'in mina 'l-'ulūmi 'l-qadīma.
251. ibid., III, 91 and 183.
252. ibid., II, 39.
253. ibid., I, 150.
254. ibid., III, 57.
255. *Kashf*, 1809.
256. *Dhail (B)*, II, 264.
257. *Inbāh*, II, 295-6.
258. *Kashf*, 1669.
259. *GAL, Suppl.* I, 495-6.
260. ibid., I, 85 and II, 1669.
261. See *GAL, Suppl.* I, 494-5; for the fourth cited work, see *Kashf*, 500.
262. See p.79 above.
263. *Nuzha*, 55: fa-inna bainahumā mina 'l-munāsabati mā lā yakhfā; li-anna 'n-naḥwa ma'qūlun min manqūl, ka-mā anna 'l-fiqha mu'qūlun min manqūl; wa-ya'lamu ḥaqīqata hādhā arbābu 'l-ma'rifati bihimā.
264. *Wafayāt*, II, 199. cf. p.79 above, where al-Anbari assimilated grammatical science to legal science, on the basis that both were rational sciences based on transmitted knowledge (*ma'qūl min manqūl*).
265. *Tarājim*, 157.
266. *TMIM*, 116 (11-12).
267. ibid.: su'ila an yuṣannifa

kitāban fī fatāwā 'l-kalām, yuqra'u wa-yu'allaq, kamā huwa fī 'l-fiqh.

268. See p.138 below.

269. *TMIM*, 116.

270. *Aṭibbā'*, 668; *GAAN*, 120, no.211 (1) cites this work in Latin translation as follows: *Exploratio accurata disquisitionum medicinalium de quaestionibus controversis vere cognoscendis, ad rationem controversarum Jurisconsultorum instituta*; see *Method*, 659, and notes 93 and 94.

271. See *Muntaẓam*, IX, 168-9: dafantanī wa-anā ḥaiy! hallā ṣabarta ḥattā amūt!

272. *al-Mankhūl*, 504, last paragraph; see p.244 below.

273. cf. *Chronologie*, 9 (no.2), and 73 (no.59); also *Chronology*, 226 and 232.

274. *Shadharāt*, IV, 11 (10).

275. See n.271 above.

276. The biographical notices of the earliest transmitters of hadith abound with the phrase lahū ṣuḥba, meaning that the biographee 'had companionship' with the Prophet (see *LL*, s.v.). A companion of the Prophet was commonly referred to as a sahabi (pl. sahaba). A sahabi was a disciple of the Prophet, and sahib was the term applied to a disciple of a master muhaddith. By extension the term was used in other Islamic fields of knowledge, mysticism (tasauwuf) and law (fiqh).

277. *TMIM*, 88: fa-sa'alahū Abū 'l-Ḥusain (al-Balkhī) an lā yaf'al, li-annahū khāfa an yunsaba ilā Abī 'Alī (al-Jubbā'ī).

278. On the licentia docendi, see *Licentia*, 255-77.

279. See *Ius Docendi*, 281-92.

280. *TNZ*, 236: nahaja lahum sabīla 'n'naẓar, wa-a'lamahum bi-mā 'alaihī ahlu hādhā 'sh-sha'ni fī 'l-mashriq mini 'stiqṣā'i 'l-fanni bi-wujūhih, wa'stīfā'ihī 'alā ḥudūdih, wa-annahum bi-dhālika 'staḥaqqū 'sma 'r-riyāsa.

281. *Shadharāt*, II, 315: mā 'arafnā 'l-jadala wa 'n-naẓara ḥattā warada Abū 'Alī ath-Thaqafī mina 'l-'Irāq.

282. See *Ṣuḥba*, 213.

283. *Muntaẓam*, X, 113 (9).

284. ibid., X, 130 (9).

285. It would seem that this last title developed into an elected post, at least in Nishapur, a post which, like that of qadi or mudarris, had its niyaba, substitute. 'Abd al-Ghafir al-Farisi, in his *Muntakhab*, fol.28a, wrote of Abu Sa'd ash-Shamati (d.454/1062) as having been elected by the Shaikhs of Nishapur to the post of Substitute-Ra'īs (ikhtārahū 'l-mashāyikhu li-niyābati 'r-riyāsati bi-Nīsābur.) From about the year 430 H. and into the 440's, Qadi 'l-Qudat Abu Nasr Muhammad b. Sa'id (d.482/1089) was the Ra'is ar-Ru'asa' in Nishapur. He kept that position until he was accused of undue partisanship in favour of his own school of law. It would therefore seem that the holder of such a post had to be above petty partisanship, since, as it would appear, he had to represent men of learning of all madhabs.

286. *Shadharāt*, I, 299; cf. *Method*, 650n.45.

287. *Ishād*, XVIII, 191 (5ff.).

288. *Shadharāt*, III, 222 (14ff.).

289. Caliphate: 170-93/786-809.

290. *TF*, 124.

291. *Muntaẓam*, VI, 327.

292. *Jawāhir*, I, 108.

293. *Nishwār*, V, 177, and *TB*, I, 313.

294. *Nishwār*, II, 87.

295. *Muntaẓam*, VIII, 23.

296. On Simanani, see *GAL*, *Suppl.* I, 636 (no.1b) and, in addition to the bibliography cited there, *Muntaẓam*, VIII, 156. This source cites Simanani twice under the same name, once sub anno 244 H. (VI, 378) and again sub anno 444 H., under which year he is cited by the other sources.

297. ibid., VIII, 306.

298. ibid., VII, 243.

299. *Wafayāt*, I, 49-51 and III, 390-2; *Jawāhir*, II, 419-20.

300. *Dhail*, I, 177.

301. *TFS*, 89.

302. cf. *Jawāhir*, I, 106: *al-munāẓara fī 'l-maḥāfil*.
303. cf. *Ibn 'Aqīl*, 707ff.
304. ibid.; on the occasion of the appointment of Abu Bakr ad-Dinawari (d.535/1141) to the post of his master Abu 'l-Khattab al-Kalwadhani (d.510/1116), deceased.
305. cf. *Muntaẓam*, X, 257-8.
306. cf. ibid., X, 265.
307. *Irshād*, XVII, 31.
308. ibid., XIII, 285-6. – The following anecdote gives another example of Nashi''s sense of humour. Once, in the company of a friend, he paid a visit to his sister. On entering her residence, he saw a small black boy, and, asking his sister who the boy was, received no answer. When he insisted, she finally said: 'He's the son of Bishara', Nashi''s concubine. 'And who else's', he asked; but she would not say. He called for his concubine and asked her: 'This boy, who's his father?' 'He has no father', she replied. 'In that case', said Nashi', turning to his friend, 'say "hello" to Christ!' – alluding to the virgin birth, an Islamic article of faith based on the Koran. ibid., XIII, 283.
309. ibid., VIII, 104ff.
310. *Wafayāt*, III, 400-1.
311. *Irshād*, XVII, 322-3.
312. ibid., XIX, 185-6.
313. *Wāfī*, I, 139.
314. *Muntaẓam*, V, 122.
315. ibid., V, 171.
316. ibid., VII, 287.
317. *Tarājim*, 32.
318. *Aṭibbā'*, 523 (1ff.).
319. *Dāris*, I, 393 and II, 292.
320. *Irshād*, IV, 137. On Proclus (Proculus), neoplatonist (A.D. 410-485), see *EB* (1968), XVIII, 586, article and bibliography by A. H. Armstrong.
321. See *Ash'arī*, 64 n.4, *apud TSS*, I, 157.
322. *Dhail (F)*, I, 211 (last 3).
323. For more detail on the resurgence of traditionalist Sunnism, see *Ibn 'Aqīl*, esp. chapter IV, 'Le mouvement hanbalite et la restauration sunnite', 293-383.
324. *Irshād*, III, 171; *Inbāh*, I, 76. The two works mentioned in the last line are likely those of the Mu'tazili theologian and jurisconsult, Qadi 'Abd al-Jabbar (d.415/1024).
325. *Poetry*, 268.
326. ibid., 167 (Arabic text), 268 (translation).
327. ibid., 119ff.
328. For examples of sama's and further details regarding them, see Salah ad-Din al-Munajjid, in his edition of *TM*, I, 621-722, where he gives a study of the sama's involving this work; and his *Ijāzāt*, I, 232-51; see also *Autographs*; *Certificats*; *Transmission*; *Manuscripts*; *Certificates*; *Hadīth*. For a collection of other sama's, see the plates in *Handlist*.
329. *Dhail (F)*, I, 82 (14).
330. ibid., 86 (19).
331. The text here is equivalent to *yaqra'ūna 'alaiya*.
332. By Abu 'Ubaid al-Qasim b. Sallam (d.c.223/837); see *GAL*, I, 107, Suppl. I, 166.
333. *Wafayāt*, III, 17-18.
334. *TFS*, 48-9.
335. *Irshād*, XV, 81-2.
336. *TNZ*, 156.
337. *Muntakhab*, fol.130b.
338. ibid., fol.133b (6).
339. *Muntaẓam*, X, 118.
340. See p.243 below.
341. Died 652/1254, grandfather of the famous Taqi ad-Din Ibn Taimiya (d.728/1328).
342. Ibn Hamdan, *Tarājim Shuyūkh Harrān*, *apud Dhail*, II, 251.
343. *Muntakhab*, fol.12a (14).
344. See p.196, n.225 below.
345. *Aṭibbā'*, 323: wajadtu sharḥahū . . . wa-qad quri'a 'alaih, wa-'alaihī 'l-khaṭṭu bi 'l-qirā'ati fī 'l-Bīmāristāni 'l-'Aḍudī . . .
346. cf. *Supplément*, s.v. *dirāya*, *apud MM*, s.v. *dirāya*.
347. See pp.99-100 above.
348. Abu Bakr Ahmad, d.368/978, *Muntaẓam*, VII, 92-3.
349. d.629/1231, *Shadharāt*, V, 135-136.
350. ibid., (12-13).

351. *TB*, VII, 390-1; also, *Muntaẓam*, VIII, 155 (8-10).
352. ibid., loc. cit. (10-13).
353. ibid., IX, 202 (14-15).
354. See *Fiqh*.
355. cf. chap. one, section 1, above.
356. *Muntaẓam*, VI, 58.
357. ibid., VI, 131.
358. See *Talbīs*, 115.
359. *Muntaẓam*, VI, 171; notice here the development: from Koran, to hadith, to fiqh, to divergences of opinion.
360. ibid., VI, 273.
361. ibid., VI, 4 (3-4).
362. ibid., VI, 279 (19).
363. ibid., VI, 280 (2).
364. cf. ibid., VII, 5, the notice on Abu ʻAli at-Tabari.
365. The ijaza deserves monographic study; *Ijāza*.
366. *Durar*, II, 257.
367. See *Shadharāt*, I, 104: wa-hādhihī ’s-sanatu tusammā ‘sanata ’l-fuqahā’, li-annahā māta fīhā jamāʻatun minhum; wa-innamā qīla ‘’l-fuqahā’u ’s-sabʻa’, li-annahum kānū bi ’l-Madīna fī ʻaṣrin wāḥidin yunsharu ʻanhumu ’l-ʻilmu wa ’l-futyā. For these seven jurisconsults, ibid., I, 114; three died in 94 H., one in 98 H., one in 100 H., and two in 107 H. However, in this same source there is yet another jurisconsult, said to be one of the seven, who died in 124 H. at age 74, ibid., I, 162.
368. *Shadharāt*, I, 156, died in 119/737.
369. ibid., died also in 119/737.
370. ibid., I, 159, died in 121/739.
371. ibid., I, 175, died in 128/746.
372. ibid., I, 194; died in 136/753.
373. ibid.: la-qad ra’aitunā fī ḥalqati Zaid b. Aslam arbaʻīna faqīhan, adnā khaṣlatin fīnā ’t-tawāsī bi-mā baina aidīnā.
374. ibid., I, 224.
375. ibid., I, 242.
376. ibid., I, 289: wa-qalla rajulun kuntu ataʻallamu minhū wa-māta ḥattā yastaftiyanī.
377. ibid., I, 292: kāna aʻlama ’n-nāsi bi ’l-Auzāʻī wa-majlisihī wa-futyāh.
378. ibid., I, 293: lam yakun aḥadun yunāziʻuhū fī dahrih.
379. ibid., II, 9: wa-adhana (= ajāza) lahū fī ’l-iftā’i wa-ʻumruhū khamsa ʻasharata sana.
380. *Durar*, III, 41; see also *Dāris*, I, 37.
381. *Durar*, IV, 234ff. On the strength of Ibn Taimiya’s memory, see p. 101 above.
382. ibid., IV, 170-1.
383. ibid., I, 79 (8): wa-kāna yataʻāsaru fī kitābati ’l-ijāza, wa-rubbamā ṣarraḥa bi-ʻadami jawāziha.
384. ibid., I, 136 (9-11).
385. *Shadharāt*, III, 263.
386. ibid., III, 272.
387. ibid., III, 284.
388. ibid., III, 290.
389. *Dhail*, I, 23 (5-6).
390. *Durar*, II, 217 (7).
391. *Dāris*, II, 197 (ult.).
392. cf. ibid., I, 37 (14).
393. *Durar*, IV, 286 (6-7).
394. *Ḍau’*, I, 172.
395. *Ḍau’*, II, 177 (16-18).
396. ibid., III, 64 (12-13): intahat ilaihī riyāsatu ’l-iftā’; also ibid., I, 119 (11): intahat ilaihī riyāsatu ’l-futyā.
397. ibid., IV, 109 (2).
398. *Ḍau’*, II, 139.
399. ibid., II, 139 (3-12).
400. *FS*, II, 67 (13-15).

Chapter 3
The Scholastic Community

1. See below under ‘multiplicity of posts’. The later practice of holding several professorships simultaneously appears to have brought about this plural, tadaris, which does not appear in the early sources available.
2. *Kashf*, I, 40-1.
3. *Irshād*, V, 79.
4. Ibn ʻAqil went to some length in refuting Juwaini on this point, *Dhail*, I, 177 (7-9); and, for some details of the refutation, *Muntaẓam*, IX, 19 (16)-20 (6).
5. *Muntaẓam*, VIII, 238 (6-8).

6. cf. ibid., VII, 51, 56, 64, 215; VIII, 62, 99, 154, 165.
7. For the details of the Shirazi affair, *MIL*, 32ff.
8. *Muntaẓam*, VIII, 246-7: ijtama'a 'n-nāsu . . . fa-jalasa [Ibn as-Sabbagh] wa-jarat munāzara, wa-tafarraqū, wa-ujriya li 'l-mutafaqqiha.
9. On Ilyas ad-Dailami, *Diary* §133, *MIL*, 22-3, *Ibn 'Aqil*, 174-5; on Nur al-Huda az-Zainabi, *Diary*, XIX, §136, *Ibn 'Aqil*, 175ff.
10. *Dhail*, I, 177 (9-10).
11. *Muntaẓam*, IX, 143 (16-17); *MIL*, 41.
12. ibid., IX, 165.
13. ibid., IX, 166.
14. ibid., X, 68.
15. ibid., X, 115-16.
16. ibid., X, 235.
17. ibid., X, 236-7.
18. ibid., X, 250.
19. *Dāris*, I, 295 (16ff.).
20. See pp. 189-90 below.
21. *'Unwān*, IX, 79.
22. *Tarājim*, 229-30.
23. *Bidāya*, XIII, 129; *Dāris*, I, 159-60 (read, on line 3: al-mudarris, instead of: al-mudarrisīn). Iqbāl founded another madrasa in Baghdad in Suq as-Sultan, and one in Wasit, with a Mosque next to it, and other foundations as well, all amply endowed; *Shadharāt*, V, 261 (7-10). He also founded in Damascus two madrasas, one for the Hanafis and another for the Shafi'is; *Dāris*, I, 159 (6-9).
24. *Bidāya*, XIV, 4 (13-14); *Dāris*, I, 64-5.
25. *Bidāya*, XIV, 89 (1-5); *Dāris*, I, 34-5.
26. Koran, VI, 106: 'Follow what has been revealed to thee by thy Lord! There is no God but He! And turn aside from the Associationists!' *Dāris*, I, 293 (5-7).
27. See below, section 4d.
28. This work on law is by Imam ad-Din Abn 'l-Qasim 'Abd al-Karim b. Muhammad al-Qazwini ar-Rafi'i (d.623/1226), entitled *al-'Azīz fī sharḥ al-Wajīz*, a commentary on the *Wajīz* of al-Ghazzali, see *GAL*, I, 424, no.111; Rafi'i's work is still in manuscript; *Dāris*, I, 296.
29. *Khūlaṣa*, I, 189: lam yu'had fī 'r-Rūm mithluh; li-anna 'l-mudarrisīna fī bilādihim lā ya'rifūna dhālik, wa-innamā yajlisu 'l-mudarrisu waḥdahū fī maḥallin khālin mina 'n-nās, fa-lā yadkhulu ilaihī illā man yaqra'u 'd-darsa wa-shurakā'uhū fīh, wa-lā yaḥḍuruhum aḥadun min ghairi talāmidhati 'l-mudarris.
30. *Dāris*, I, 32 (14-16).
31. ibid.
32. See below, section 4d.
33. Caliphate: 170-93/786-809.
34. *Irshād*, XI, 237.
35. In secret, because al-Kisa'i, already a famous scholar, did not want the fact known.
36. ibid., XI, 229.
37. *Nishwār*, V, 185; *TB*, II, 173 (1-2).
38. *Irshād*, XVIII, 191; *Jāmi'āt*, 240.
39. *Irshād*, I, 131.
40. cf. ibid., I, 131.
41. *Muntaẓam*, VII, 140.
42. It should be noted here that the verb used is qara'a, to recite from memory to a master whose function it was to correct any errors that occurred in the recitation. Hamadhani, who had been frequenting the lectures of the grammarian, had merely been an auditor, asma'u tadrīsah. The grammarian apparently did not charge auditors, only reciters.
43. Of Ibn Jinni (d.392/1002).
44. *Dhail* (*N*), fol.95b. – Note that Thamanini was charging fees for teaching grammar in a masjid. It is possible that the mosque's endowment income was insufficient to defray expenses including maintenance, a priority item.
45. *Ta'līm*, 52.
46. *Ḍau'*, I, 282 (19-20).
47. *Wafayāt*, V, 190-3.
48. *Takmila*, 175.
49. *Muntaẓam*, VIII, 314. This teacher of hadith is cited frequently in Ibn Jauzi's *Muntaẓam*.
50. *Mīzān*, 171; *Jāmi'āt*, 240.

51. *'Ulūm*, 15. This was not a change of heart on the part of the celebrated theologian and jurisconsult, as some have surmised; cf. *Jāmi'āt*, 240; it was more likely a distinction made between fees exacted from students, a socially undesirable form of compensation, and payment from an endowment set up for the purpose, a perfectly legitimate one. Ghazzali might even have concurred with his predecessor, Abu Ishaq ash-Shirazi, in allowing Ibn an-Naqur to accept fees from his students on the basis of legitimate need.
52. *Muntaẓam*, VIII, 139-40.
53. ibid., VII, 273.
54. *Nishwār*, I, 253.
55. ibid., II, 52-3.
56. *Ibn 'Aqīl*, 303-8.
57. *Muntaẓam*, VII, 268.
58. cf. *Irshād*, XIII, 256: wa-sa'alahū ijrā'a rizqin 'alaihī *fī jumlati man yartaziqu min amthālih . . .*
59. ibid., III, 65-6.
60. See p40. above.
61. *Wafayāt*, IV, 242.
62. *Jawāhir*, I, 210.
63. *Irshād*, II, 55, to the physician Ibrahim b. Hilal as-Sabi (d.384/994).
64. Except a fragment of the deed for the Nizamiya Madrasa preserved in *Muntaẓam*, IX, 66.
65. *Dāris*, I, 413 (5ff.). The Arabic terms in parentheses denote the holder of the post, then the post itself, unless otherwise indicated.
66. *FS*, II, 52.
67. ibid., II, 57 (1-3).
68. *Dāris*, I, 127 (1-10).
69. ibid., I, 427 (1-4, 10-13), 428 (2-3, 17-18).
70. ibid.
71. *Nishwār*, II, 234.
72. *Muntaẓam*, VIII, 80-1.
73. ibid., VIII, 93.
74. *Wafayāt*, II, 372-3.
75. *Muntaẓam*, X, 14; *MIL*, 21.
76. ibid., 41-3.
77. ibid., 42.
78. ibid., 38ff.
79. ibid., 52-3.
80. ibid., 22.
81. *Ḍau'*, II, 233 (12ff.): wa-ḥasala li 'l-fuqahā'i mālun kānū lā yaṣilūna ilaihī qablah.
82. cf. *supra*, p.161, Ghazzali's statement that professors could accept payment from endowment funds for their legitimate needs only.
83. In *Inṣāf*, VII, 69: mimman akala 'l-māla bi 'l-bāṭili qaumun lahum rawātibu aḍ'āfu ḥājatihim, wa-qaumun lahum jihātun ma'lūmuhā kathīrun ya'khudhūnahū wa-yastanībūna bi-yasīr.
84. *Mu'īd*, 109.
85. *FH*, III, 300 (24ff.).
86. ibid., III, 300.
87. *Jawāhir*, I, 207, *apud* al-Mundhiri's *at-Takmila li-wafayāt an-naqala.*
88. *Dāris*, I, 425 (15ff.): these colleges were ash-Shamiya Intra-Muros, al-Ghazzaliya, az-Zahiriya, ar-Rukniya and an-Nasiriya.
89. *Dāris*, I, 192 (11ff.).
90. ibid., I, 31.
91. ibid., I, 34: li-anna sharṭa 'sh-Shāmīya an lā yujma'a bainahā wa-baina ghairihā.
92. This divisibility of the post of professor of law (tadris) emphasizes the fact that there was usually only one such post in each institution belonging to any one of the madhabs. In institutions belonging to more than one madhab, there was only one professorship for each school of jurisprudence represented.
93. *MIL*, 39; both professors were dismissed in 484/1091 to make way for the appointment of al-Ghazzali alone.
94. *FH*, III, 297 (13-16).
95. *Dāris*, I, 280 (3-6).
96. ibid., I, 54.
97. ibid., I, 381 (7): an-niṣfu bi-ṭarīqi 'l-aṣāla, wa 'n-niṣfu niyābatan.
98. ibid., I, 224 penult.: niyābatan 'anhū fī niṣfi tadrīsihā, wa 'stiqlālan fī 'n-niṣfi 'l-ākhar.
99. ibid., I, 296 (11).
100. ibid., I, 147 (16-17); for other cases of consideration ('iwaḍ), see ibid., 131 (ult.), 149 (8), 162 (5 and 8), 310 (8), 320 (ult.), 394 (19).

101. ibid., I, 394 (17).
102. ibid., I, 309 (5).
103. *FF*, fol.58b.
104. In *Inṣāf*, VII, 69.
105. *FITM*, XXXI, 12ff.; *FIT*, IV, 10-11.
106. *Muntaẓam*, IX, 18 (20).
107. *MIL*, 6.
108. ibid.
109. ibid.
110. *Dāris*, I, 399 (6): wa-anna 't-tadrīsa li-dhurrīyatih, wa-yustanābu 'an ghairi 'l-muta'ahhil.
111. ibid., I, 290 (15ff.).
112. ibid., I, 147 (16-17): nazala 'ani 'l-Khānqāh li-Walī 'd-Dīn b. Qāḍī 'Ajlūn bi-mablaghin jaiyid, thumma nadima 'alā dhālik. For other such cases, see ibid., I, 149, 255, 288, et passim.
113. *Tarājim*, 222-6.
114. *Ḍau'*, III, 87: kāna 'arīyan mina 'l-'ilm; illā anna lahū 'ttiṣālan bi 't-Turk, ka-da'bi ghairih.
115. cf. *TSS*, VI, 253.
116. ibid., VI, 253.
117. *FS*, II, 58 (10-16).
118. ibid.
119. ibid., II, 56 (2ff.).
120. ibid., II, 119-20.
121. ibid., II, 55 (ult.)-56 (1).
122. ibid., II, 56 (8-9).
123. *Wāḍiḥ*, I, fol.165b (ult.).
124. As quoted in *FH*, II, 227 (2ff.). See (p.186 below) the answer of Ibn as-Salah dealing with their stipends for work accomplished.
125. *Dāris*, I, 163 (1ff.).
126. ibid., I, 286 (last 3).
127. ibid., I, 338 (10ff.).
128. *FS*, II, 111 (10ff.).
129. *Mu'īd*, 155.
130. For these two posts, see below, under 'Posts, Occupations, Functions'.
131. *Mu'īd*, 156.
132. See p.167 above.
133. *Mu'īd*, 156.
134. The absence of a student could cost him a part of his stipend.
135. ibid., 157.
136. ibid., 160.
137. No doubt, Subki wished to avoid being accused of anti-Sufism, a charge that was previously laid against Ibn al-Jauzi.
138. *Mu'īd*, 171-6.
139. ibid., 178-9.
140. *Wafayāt*, V, 422.
141. *Shaharāt*, III, 16; *Jāmi'āt*, 279.
142. *Irshād*, IV, 33.
143. ibid., IV, 45.
144. ibid., III, 225.
145. *TSS*, III, 254.
146. *Dāris*, I, 103 (9-10): lam yatanāwal min ma'lūmihī shai'an bal ja'alahū murṣadan li-man yaridu 'alaihī mina 'ṭ-ṭalaba.
147. *Dhail*, I, 118-19. There was some question about the text, some being sceptical regarding the number of students, and suggesting the variant *nafsan* instead of *alfan*, in order to read 'seventy persons'; but Ibn al-Jauzi accepted the reading 'seventy thousand', explaining that Khaiyat's teaching was done throughout his long life, his disciples helping him in the process: yuqri'u huwa bi-nafsihī wa-bi-aṣḥābih.
148. *Durar*, V, 109.
149. ibid., V, 102: yuḥsinu ilā 'ṭ-ṭalabati kathīran.
150. *Dāris*, I, 157 (8-9): wa-kāna fīhī iḥsānun ilā 'ṭ-ṭalabati wa-usā'iduhum.
151. *Nishwār*, V, 187: wa-qad amartu laka bi-shai'in tufarriquhū 'alā aṣḥābik; *TB*, II, 173.
152. *Tajārib*, I, 120 (3, margin); *'Uyūn*, IV, 222.
153. ibid.
154. *Mir'āt*, sub anno 122 (A.D. 740).
155. *Jāmi'āt*, 279, citing *Khiṭaṭ*, IV, 49. Ghanima sees this as the precursor of what happened later in Baghdad's Nizamiya College. But the madrasa was a charitable trust established in perpetuity as a private endowment; what the Fatimid caliph had done was to assign allowances which would end at his pleasure or with his demise, the money coming as it did from the public treasury: *wa-ajrā 'alaihimi 'l-arzāqa mā yakfī kulla wāḥidin minhum*. This kind of allowance had already been practised in Baghdad

centuries before with the early Abbasids; see p.28 above.
156. *Dhail* (*Ẓ*), fol.75a.
157. *Muntaẓam*, VII, 277.
158. *Shadharāt*, I, 295-7; *MIL*, 24 n.1.
159. *Ḍau'*, I, 47: mālan jumman yufarriquhū zakātan 'alā 't-ṭalabati wa'l-fuqarā'.
160. *Nishwār*, II, 275-6.
161. *Irshād*, I, 155: kāna ma'āshuhū min ahli 'l-ḥalqa.
162. ibid.
163. For the full details of this anecdote, rather romantic, see *Muntaẓam*, VI, 250-2.
164. ibid., VIII, 13-14.
165. ibid., IX, 22 (20-1): 'ānā 'l-faqrā fī ṭalabi 'l-'ilm, fa-rubbamā 'staḍwa'a bi-sirāji al-ḥāris.
166. *Muntaẓam*, IX, 22-4; *Dāmaghānī*.
167. On al-Baji and Ibn Hazm, see *Irshād*, XII, 239-40. On the ulama's opposition to madrasas, see *Kashf*, 22b (24-9).
168. *Marqūm* (unfoliated): wa-qaumun ākharūna qana'ū bi-zīyi 'l-mutafaqqihīn, wa 'ṣ-ṣiyāḥi 'l-jārī baina 'l-mutanāẓirīn, wa-qālū: "alāma nut'ibu anfusanā wa-rai'u 'l-madārisi ḥāṣilun lanā?'
169. *Muntaẓam*, X, 37; *MIL*, 54.
170. *FS*, II, 57 (1-3).
171. ibid., II, 58-9 (penult.): wa-idhā kānat ṭabaqātuhum ka-ṭabaqāti 'l-Barrānīya – wa-kānū mi'a – etc.
172. *Mu'īd*, 90-1.
173. *Dāris*, I, 290 (12).
174. *FS*, II, 125 (9-10).
175. ibid. (12-14).
176. ibid. (14-16).
177. *FH*, III, 227.
178. *Dāris*, I, 268 (16ff.); see also ibid., I, 208, and I, 24.
179. ibid., I, 109.
180. See p.58 above.
181. The Tankiziya College for Koran and Hadith had, in addition to the nazir, a na'ib-nazir; see *Dāris*, I, 126-7 (9-10).
182. See *Muntakhab*, fol.92a (14): kāna yanūbu fī 'l-khiṭābati fī 'l-jami'i 'l-qadīm.
183. According to some juris-consults an imam could hire a substitute; but others contest this opinion; see p.219.
184. ibid., fol.28a.
185. See p.202 and n.267 below.
186. See p.199 and n.242 below.
187. *Muntakhab*, fol.80b: istakh-lafahū . . . li 't-tadrīsi fī madrasatihī wa-ifādati 'l-mukhtalifati mina 'ṭ-ṭalaba.
188. *Muntaẓam*, VIII, 300 (1): wa-tafaqqaha 'alā 'l-Juwainī wa-kāna yakhlufuhū wa-yanūbu 'anh.
189. *FH*, III, 300 (9): bi-sharṭi an yastanība mithlahū au khairan minh; li-annahū in lam yakun bi-ṣifatih, lam yaḥṣali 'l-gharaḍu bih.
190. See case in ibid., III, 270 (18)-271 (7).
191. *Muntaẓam*, IX, 87 (6-7).
192. *Durar*, I, 224 (last two): waliya qaḍā'a 'sh-Shām, 'iwaḍan 'an akhīh, . . . wa-lam yaṣna' dhālika illā ḥifẓan li 'l-waẓīfati 'alā akhīh.
193. *Mu'īd*, 152-3.
194. ibid., 153-4.
195. Lit.: 'He is a consumer of that which is unlawful'.
196. cf. *Method*.
197. *LR*, s.v. *mulāzim*.
198. *Khulāṣa*, I, 17.
199. ibid., I, 51.
200. ibid., I, 158.
201. *LR*, s.v. *khārij* and *dākhil*.
202. *Khulāṣa*, I, 189.
203. *Mu'īd*, 154-5.
204. *Jāmi'āt*, 265; and Shalaby (*ME*, 144), who believes that the post 'appeared mostly in connection with al-Nizamiyah institutions and their professors'.
205. *'Unwān*, IX, 188-9.
206. *Ibn 'Aqīl*, 204-5.
207. *Dhail* (*F*), I, 213 (4): a'āda shaikhahū . . . fī darsi 'l-khilāf.
208. ibid., I, 404.
209. *Dhail* (*Ẓ*), fol.210a.
210. *Dāris*, I, 274 (16).
211. *Jawāhir*, I, 237: fa-baṭala 'd-darsa min dhālika 'l-yaumi wa-a'āda bi 'l-Manṣūrīya; notice the term dars as signifying the law course as taught by the professor, as contrasted with the term a'āda,

the function of the mu'id in law.
212. *Dāris*, I, 54.
213. On al-Qarāfa, see *Qarāfa*.
214. *Khiṭaṭ*, II, 400-1.
215. Or an accomplished muhaddith; for the term was also used in the field of hadith, unlike the term mu'id which belonged to law alone.
216. See p.214 below.
217. *Mu'īd*, 155.
218. *Irshād*, XV, 62: fuḥūl al-'ulamā' yarji'ūna ilaih, wa-yaqra'ūna 'alaih, wa-yafza'ūna fī ḥalli 'l-mushkilāti wa-sharḥi 'l-mu'ḍilāti ilaih.
219. *Jawāhir*, I, 120.
220. *Muntakhab*, fol.144b: thumma 'āda ilā Nīsābūr wa-am'ana fī 'l-ifāda.
221. *Dhail (F)*, I, 402.
222. *Irshād*, XII, 259: wa-qa'ada li 'l-ifādati wa 't-tadrīsi sinīn, wa-takharraja bihī ṭā'ifatun mina 'l-a'immati sami'ū minh, wa-qara'ū 'alaih, wa-balaghū maḥalla 'l-ifāda.
223. *Dhail (F)*, I, 116. For the post of mustamli, see p.213 below.
224. ibid., I, 214-15. See further in *Dāris*, I, 58 (15-16) where ifada is linked with the function of the muhaddith and in *Jawāhir*, I, 73, where it is linked with the function of the faqih.
225. *Durar*, V, 102: wa-shara'a fī 'l-ifāda, fa-kāna yuqri'u bi 'l-jāmi'i 'ḥtisāban sharḥan wa-taṣḥīḥan.
226. *Muntakhab*, fol.57b: kāna mufīdī fī samā'i 'l-ḥadith.
227. ibid., fol.71b: ḥaddatha 'ani 'ṭ-ṭabaqati 'th-thāniyati bi-ifādati 's-Samarqandī.
228. ibid., fol.16b (18-19).
229. ibid., fol.28b.
230. ibid., fol.33a-b.
231. ibid., fol.28b.
232. *Faqīh*, 520ff./II, 156ff.
233. ibid.
234. *Muntaẓam*, VI, 369-70; *Jawāhir*, I, 98-9.
235. ibid.
236. *'Ilm*, II, 47 (3-5).
237. *Muftī*, fol.6a (15).
238. *Wafayāt*, II, 427-8.
239. cf. pp.140ff. above.
240. See *Dāris*, I, 251 (ult.): kāna yuktabu 'anhū fī 'l-fatwā wa-yaktubu huwa 'smah; and ibid., II, 124 (20-1): yaktubu bi-khaṭṭihī 'alā 'l-fatwā.
241. *FA*, 232.
242. *Dāris*, I, 229 (3-4), and *Shadharāt*, VI, 44 (16-17).
243. Zain ad-Din al-Kattani (d.738/1338) did so, telling the person soliciting his fatwa to go seek it from the qadis who collected big salaries; see *Durar*, II, 238-9.
244. In 394/1004, the Buwaihid Baha' ad-Daula appointed a Shi'ite sharif as chief qadi and marshall of the Shi'ite sharifs. The appointment took place in Shiraz; neverthelsss, the appointee did not assume his duties as chief qadi because the caliph al-Qadir denied him authorization to assume the post. See *Muntaẓam*, VII, 226. On the qadis in Baghdad, see *Cadis*.
245. *Muntaẓam*, VII, 5-6.
246. ibid.
247. *TFS*, 90.
248. *Muntaẓam*, IX, 15: fa-ra'ā Amīr al-Mu'minīn raf'a 'ẓ-ẓinnati 'anhū bi-qabūli māl, fa-'adala ilā 'sh-Shāmī.
249. For Shami, see *Ibn 'Aqīl*, 223, and n.2 for bibliography.
250. *Muntaẓam*, X, 125 (20-1), where Ibn al-Jauzi accuses a contemporary for accepting bribes and thus thwarting justice: bi'sa 'l-ḥākim! ya'khudhu 'r-rishā', wa-yubṭilu 'l-ḥuqūq.
251. *Dāris*, I, 289 (2-3).
252. ibid., I, 54 (9-10): istamarra kullu man tawallā qaḍā'a 'l-ḥanābilati yatawallāhā, wa-in lam yakun ahlan li 't-tadrīsi bihā. The college had a slot for a repetitor (wa-lahā i'āda), who perhaps made up for the deficiencies of the master.
253. cf. p.57 and n.347 above.
254. On the profession of the notary, see *Notariat*. This excellent work, applying to Islam in general, is heavily based on late sources and for the most part, treats of Western Islam. It remains, however, fundamental and what follows here merely corroborates or supplements it, particularly for the earlier period in

Eastern Islam. See also the more recent *Documents*, which includes the edition of the first part of aṭ-Ṭahāwī's *Shurūṭ*.

255. *Tarājim*, 217.

256. Al-Qadi Ya'qub al-Barzabini was described by Ibn 'Aqil as the most knowledgeable of the qadis of his day in the administration of justice and the principles of notarial science; see *Dhail*, I, 93 (3).

257. Al-Husain b. 'Ali an-Nisaburi (d.349/960) is described as a shahid of Nishapur, 'in spite of the superiority of his knowledge in the various religious sciences'; see *Muntaẓam*, VI, 396: wa-kāna, ma'a taqaddumihī fī 'l-'ulūm, aḥada 'sh-shuhūdi 'l-mu'addalīna bi-Nīsābūr.

258. *Muntakhab*, fol.57b: speaking of a shahid who died in 410/1019, 'min jumlati 'sh-shuhūdi yata-'ammamu wa-yataṭailas'.

259. Speaking of an-Nasawi (d.510/1116), Ibn al-Jauzi said that in Nasa the function of passing on the probity of notary-witnesses was his to perform: 'wa-kāna tazkiyatu 'sh-shuhūdi ilaihī bi-Nasā'; see *Muntaẓam*, IX, 188. The Sharif Abu Ja'far and Ya'qub al-Barzabini were both accepted as shahids by the chief qadi Damaghani and it was their professor of law, Qadi Abu Ya'la, who passed on their probity; see *Dhail*, I, 92 (8-10). The sharif resigned from his post of shahid shortly before his death; ibid., I, 21 (1-2).

260. *Muntaẓam*, VI, 300 (19-23), and *Dhail*, I, 97 (10-13).

261. *Muntaẓam*, loc. cit.

262. *Dhail*, loc. cit.

263. *Muntaẓam*, VIII, 161 (12).

264. ibid., VII, 167-8.

265. ibid., X, 21 (5-10).

266. A small amount of money, cf. *Supplément*, s.v. *ḥbb*.

267. *Muntaẓam*, X, 204.

268. See *Notariat*, 16ff., 37ff.

269. Nu'aimi, in *Dāris*, I, 146 (penult.), speaks of an expert shahid-notary who amassed a considerable fortune: haṣṣala dunyā mina 'sh-shahāda. cf. *Notariat*, 27-8.

270. As in the case of Ibn Sadr ad-Din, a resident of Baibarsiya College who practised as notary in two parts of the city of Damascus, cited in *Tarājim*, 203: takassaba bi'sh-shahāda . . . wa-lam yakun fī-hā bi 'l-māhir ma'rifatan wa-khaṭṭan.

271. See his notice in *Wafayāt*, VI, 247-51.

272. *Irshād*, I, 155: jalasa ṣadran yuqri'u 'n-nāsa fī 'l-jāmi'.

273. *Dāris*, I, 57 (16): taṣaddara bi 'l-jāmi' li 'l-iftā'i wa 't-tadrīs; and *A'lām*, 78: taṣaddara li 'l-ijābati 'an kulli su'ālin fīhā yuṭraḥu 'alaih.

274. *Irshād*, XIII, 169.

275. *Nishwār*, I, 48.

276. *Wafayāt*, II, 27.

277. *Futyā*, fol.9a.

278. *Irshād*, XII, 226.

279. *FS*, II, 151 (1-2): al-mudarrisīn wa'l-muftīn wa'l-mutaṣaddirīn wa-ghairi dhālik.

280. *Dāris*, I, 405 (4ff): wa-aqāma bi-Dimashq 'alā waẓā'ifi wālidih, nazala lahū 'anhā fī ḥayātih, wa-hiya: taṣdīr . . wa-i'ādāt, thumma darrasa bi'l-'Aṣrūnīya . . .; and ibid., I, 235 (9-12): wa-kataba jihātah, wa-hiya: at-taṣdīr, wa-i'ādat al-'Aṣrūnīya, wa-mashyakhat madrasat al-Khabīṣīya, . . . wa-lam yakun bi-yadihī tadrīs – differentiating between tasdir and tadris.

281. cf. n.272 above, ṣadr, in: jalasa ṣadran.

282. *Dāris*, I, 57 (antepenult.): taṣaddara bi'l-jāmi'i li 'l-iftā'i wa 't-tadrīs.

283. ibid., I, 405 (4ff.).

284. ibid., I, 395 (10): ḥāṣala lahū taṣdīrun fī 'l-jāmi'.

285. *Passim*.

286. *Dhail (F)*, II, 437 (2-3): al-qirā'a wa'l-ḥadīth, wa'l-fiqh, wa'l-usūlain, wa 'n-naḥw; ibid., I, 57 (16): li 'l-iftā'i wa 't-tadrīs; *Irshād*, II, 5: mutaṣaddiran . . . yuqra'u 'alaihī 'l-adab.

287. *Dāris*, II, 411.

288. *Khiṭaṭ*, II, 278.

289. ibid., II, 278: rattaba . . . fī 't-taṣdīri li-ifādati 'l-'ulum . . . al-Qūnawī.

290. *Dhail* (*F*), I, 359 (12): taṣaddara li 't-tadrīs, wa 'li 'shtighāl, wa 'l-ifāda; cf. ibid., II, 38 (antepenult.): taṣaddā li 'li 'shtighāli wa 'l-ifāda.
291. *Dāris*, I, 259 (9-11): wa 'ntafa'a jamā'a.
292. ibid., I, 553 (16-17): ustunzila 'an taṣdīri 'l-Jāmi' al-Umawī, wa-jalasa li 'li 'shtighāl. The biographer went on to say that Jazari then acquired half of a professorship of law in a madrasa, and that he had some knowledge in a variety of fields, but that he was weak in law.
293. *Ḍau'*, II, 236 (8): lazima manzilahū 'alā 'ādatihī fī 'li 'shtighāli wa'l-ishghāl.
294. The ascetic Mu'tazili grammarian, Sirafi, worked students in a variety of fields, but accepted remuneration only from his copying of manuscripts; *Wafayāt*, I, 360-1.
295. Ibn Qadi Shuhba (d.851/1447), in *Dāris*, II, 402.
296. This answer no doubt indicates that the waqfs of the madrasas (zawiyas) of the Mosque were independent of that of the Mosque itself.
297. For further details, see ibid.
298. In the texts available to me, I have not come across the infinitive noun of the first form, *shughl*, with the meaning here indicated; and there is no way to distinguish between the first and fourth forms except through their infinitive nouns.
299. The term ishtaghala has the ordinary meaning, with the preposition *bi*, of *devoting oneself to* something. *TFS*, 118: wa 'shtaghala bi 'l-'ibādati ḥattā māt (he devoted himself to the worship of God to the day of his death).
300. *Dhail* (*F*), I, 333 (3).
301. ibid., 359. See also: taṣaddara li 'li 'shtishāli wa 'l-ifāda, *Dāris*, II, 38; taṣaddara li 'li 'shtighāli wa 'l-fatwā, ibid., I, 245 (ult.), II, 43; taṣaddara li 'li 'shtighāli bi 'l-jāmi'i khamsa 'asharata sana, wa-kāna yuftī bi-ujra, ibid., I, 372 (6-7).
302. *Dhail* (*F*), II, 94.
303. See ibid., II, 453 (6-12).
304. *Dāris*, I, 46: ishtaghala fī 'l-fiqhi wa 'l-ḥadīth.
305. *Wafayāt*, I, 360-1.
306. *Ḍau'*, I, 330 (14).
307. *Dhail*, II, 186 (5).
308. *FH*, III, 229 (2ff.).
309. *FITM*, XXXI, 95.
310. That is, the requirements of the stipulations of the waqf deed are not met.
311. *FS*, II, 55 (15-20).
312. *Dhail* (*F*), II, 445-6.
313. The chief qadi Shams ad-Din 'Abd ar-Rahman b. Qudama (d.682/1283), one of the teachers of Ibn Taimiya, after resigning from his post, devoted himself to teaching law, working the students, and writing books (baqiya mutawaffiran 'alā 'l-'ibada, wa 't-tadrīs, wa-ishgāli 'ṭ-ṭalaba, wa 't-taṣnīf); see ibid., II, 307 (21-2).
314. ibid., I, 250 (6-8).
315. *FS*, II, 43 (5 from bottom).
316. ibid., II, 111 (10-15).
317. The term 'scholar' was used for the undergraduate in the medieval collegiate system at Oxford.
318. ibid., II, 55 (15-20).
319. *Ḍau'*, II, 236.
320. *Dāris*, I, 318-19.
321. See p.175 above.
322. *Dhail* (*F*), II, 408-9.
323. *FS*, II, 56 (8-9).
324. *Dāris*, I, 392 (6-7): taṣaddara li 'li 'shtighāl . . . wa-kāna yuftī bi-ujra.
325. See, inter alia, ibid., I, 245-6.
326. See, inter alia, ibid., I, 245-6 *et passim*; *Dhail* (*F*), I, 313 (17-19); I, 333 (3); II, 445 (ult.); II, 408-9; *et passim*.
327. *Dāris*, I, 321 (17ff.).
328. ibid., I, 405 (5-6): taṣdīr bi 'l-Jāmi' al-Umawī wa-i'ādāt, thumma darrasa bi 'l-'Aṣrūnīya . . . wa-darrasa bi 'l-Mujāhidīya niyābatan.
329. ibid., II, 43: kāna qabla 'l-qaḍā'i yataṣaddaru bi 'l-Jāmi' al-Muẓaffarī li 'li 'shtighāli wa'l-fatwā.
330. *Dhail* (*F*), I, 313.
331. *Mu'īd*, 159-69.

332. *Dāris*, I, 24, *et passim*.
333. *Mu'īd*, 159.
334. *FS*, II, 111 (15-20).
335. *Muntakhab*, fol.8b (6): speaking of a muhaddith: wa-kāna yamtani'u mina 'r-riwāya, yantaẓiru nafāqa 's-sūq.
336. ibid., fol. 85a: kāna ya'khudhu ajzā'a 'l-mashāyikh, wa-yaḥbisuhā, wa-lā yarudduhā ilā arbābihā.
337. ibid., fol. 128b.
338. For further details on this development and some of its consequences, see *Ash'arī*.
339. cf. *MIL*.
340. *Wafayāt*, I, 57-8: ṭuliba ilā Nīsābūr li-nashri 'l-'ilm, fa-ajāba wa 'ntaqala ilaihā.
341. *Dhail*, I, 13: fī baitihī wa-wa-masjidihī wa-jāmi'i 'l-Manṣūr.
342. *Dhail* (*F*), I, 326-7: wa-kāna lā ya'kulu min amwāli 'ẓ-ẓalama, wa-lā qabila minhum madrasatan qaṭṭu wa-lā ribāṭan, wa-innamā kāna yuqri'u fī dārihī wa-naḥnū fī masjidihī sukkān, wa-kāna yuqri'u niṣfa nahārihī 'l-ḥadītha wa-niṣfahū 'l-Qur'āna wa 'l-'ilm.
343. See *Dāris*, I, 28 (2-4).
344. *Talbīs*, 115.
345. *Dāris*, I, 89 (15-16): fī 'l-jāmi'i min *ḥalaqi* 'l-ḥadīthi mī'ādun bi 'l-Kilāsa li 'l-Qāḍī 'l-Fāḍil.
346. *Khiṭaṭ*, II, 411: kāna ya'malu fīhī (=fī masjid Ibn ash-Shaikhī) mī'ādan; cited twice on the page.
347. *Dhail* (*F*), I, 321: kāna li 'ṭ-ṭalabati 'alaihī mawā'īdu yu'allimuhum fīhā qirā'ata 'l-ḥadīth, wa-yufīduhum, wa-yaruddu 'alaihimi 'l-ghalaṭ.
348. ibid.: intafa'a bihī jamā'a.
349. *Ḍau'*, III, 12: Shaikh iqrā', wa-Shaikh ḥadīth, wa-Shaikh mī'ād. . . .
350. *Khiṭaṭ*, II, 391: rattaba fīhā mī'ādan.
351. ibid., II, 411: kāna ya'malu fīhī (=masjid Ibn ash-Shaikhī) mī'ādan yajtami'u 'n-nāsu fīhī li-samā'i wa'ẓih.
352. *LL*, s.v.
353. *LR*, s.v.
354. *Supplément*, s.v.
355. See, in addition to the previous notes, *Dāris*, I, 14; also, *Durar*, III, 32: kāna qad quri'a 'alaihī mī'ādun mina 'l-ḥadīth . . .
356. *Mustamlī*; also *Imlā'*.
357. cf. *Materials*, 37 (antepenult.).
358. See p.195 above.
359. *Dhail* (*F*), I, 116 (15ff.); and for al-Khaffaf, ibid., 214-15.
360. *Irshād*, XIII, 258; kāna thiqatan daiyinan, wa-qallamā yakūnu 'n-naḥwīyu daiyinan!
361. The waqf instrument of the Nizamiya Madrasa of Baghdad provided for a muqri' whose rank was below that of the professor of law; see *MIL*, 37.
362. *Mu'īd*, 156.
363. ibid., 158.
364. ibid., 158-9.
365. *Dāris*, II, 195.
366. *Mu'īd*, 176.
367. ibid., 176-8.
368. ibid., 180.
369. ibid., 160-1.
370. ibid., 161-2.
371. ibid., 162.
372. ibid., 163.
373. For instance, in the Tankiziya College for Koran and Hadith, the Professor of Koranic Science was also the imam; *Dhail*, I, 126-7.
374. ibid.
375. Al-Yazidi (d.202/818) got his name from being the mu'addib of the children of Yazid b. Mansur, the maternal uncle of the Caliph al-Mahdi; he was also the mu'addib of the Caliph al-Ma'mun; *Wafayāt*, V, 232.
376. See *FISH*, fols.113b-114a, for the terms faqih al-kuttab and faqih al-aitam.
377. The mu'addib was also known to teach in a kuttab; *Muntaẓam*, VI, 127.
378. *Mu'īd*, 185.
379. Read: wa-'alaihī mā 'alā 'n-*nuqabā*, rather than: *atqiyā*, in *Mu'īd*, 201 n.2.
380. *Materials*, 38-9.
381. cf. *LL*, s.v.; *Supplément*, s.v.
382. See *Cadis*.
383. *Mu'īd*, 147.
384. ibid., 157.

385. *Dāris*, II, 406 (8-9).
386. cf. ibid., II, 402 (12).
387. Another term for bookseller was kutubi, from kutub, books, and later, suhufi (now the term for journalist), from suhuf, leaves of a book.
388. *Dhail* (*Z*), fol.111b: kataba kathīran mina 'l-kutubi *taurīqan* li 'n-nās, in reference to Abu 'l-Futuh 'Ubaid Allah b. al-Mu'ammar *al-Warraq*.
389. *Irshād*, XVIII, 17.
390. Ibn al-Jauzi says of him: 'He was the law professor of the followers of Ahmad (b. Hanbal) and their greatest jurisconsult in his day'; *Muntaẓam*, VII, 263-4.
391. ibid.
392. *MIL*, 29.
393. *Muntaẓam*, VII, 95.
394. *Dhail* (*P*), fol.131a.
395. *Irshād*, XII, 191.
396. ibid., II, 137.
397. *Dhail* (*Z*), fol.111b.
398. *Muntaẓam*, VI, 386.
399. *Irshād*, XV, 75.
400. ibid., VII, 242.
401. ibid., XVIII, 62.
402. ibid., XIII, 221.
403. *Muntaẓam*, VII, 177.
404. *TSS*, III, 92; the servant's name was Abu Tahir b. Shaiban b. Muhammad of Damascus.
405. *Muntaẓam*, X, 13.
406. Ahmad b. Abi 'l-Wafa' (d.576/1180); this servitor-student later became 'the professor of law and mufti' of Harran; see *Dhail* (*F*), I, 347.
407. ibid., I, 250.
408. He was caught stealing, and his hand was cut off in punishment; *Muntaẓam*, X, 145.
409. *Mu'īd*, 179-80: read *tathmīr*, as in the critical apparatus, instead of *tamyīz*; ibid., 180 n.3.
410. *Dāris*, I, 257 (5-7): wa-wulliya khidmata 's-Sumaiṣāṭīya.

Chapter 4
Islam and the Christian West

1. *Universitäten.*
2. *Universities.*
3. cf. *Cité*, 51.
4. Historians of Muslim education have frequently assimilated the madrasa to the university. A work on this subject in Arabic was entitled 'History of the Great Islamic Universities', (Ghunaima, Muḥammad 'Abd ar-Raḥīm, *Tārīkh al-jāmi'āt al-islāmīya al-kubrā*, with a corresponding title in Spanish translation: *Historia de las grandes universidades islámicas*, Tetuan 1953) in which the author concludes that all higher learning, in effect, amounts to university learning (ibid., 13ff.; except for this mistaken definition, which is rather a wide-spread misconception not by any means peculiar to works in Arabic, Ghunaima's work is, for the most part, a fine piece of scholarly research.) But higher learning existed in the Greco-Roman world, in Byzantium, in Islam, and in the Christian West, long before the university as such came into existence.
5. For more details on the university as a corporation as compared with the madrasa, see *Madrasa*, and *Trust*.
6. *RU*, 4-5.
7. *Universities*, I, 3 n.1 (by Powicke).
8. See chapter one, part III, above.
9. *Universities*, I, 501.
10. ibid.
11. *Fondations*, 47-8.
12. ibid., 49-50.
13. ibid., 50-1.
14. *Bridges*, esp. chapter 3, 31ff.
15. *Anjou.*
16. *Universities*, III, 178; emphasis added.
17. ibid., III, 180-1; emphasis added.
18. ibid., III, 193.
19. Emden edited this part of Rashdall's work, see *Universities*, I, xliii; the reference to Mallet is made in ibid., III, 181 n.1.
20. *Oxford*, I, 83, and n.1.
21. For further details, see *College*.
22. 71 Conn. 316.
23. *Yale*, 324.

24. ibid.
25. ibid., 325-6; emphasis added.
26. *Universities*, II, 105.
27. op. cit., II, 104-5.
28. U.S. Reports 17 (Wheaton 5).
29. ibid., 562-3.
30. ibid., 636; emphasis added.
31. ibid., 654.
32. ibid., 657.
33. ibid., 667-8; emphasis added.
34. ibid., 574.
35. ibid.
36. ibid., 637; emphasis added.
37. ibid., 638-9; emphasis added.
38. ibid., 668; emphasis added.
39. ibid., 640-1; emphasis added.
40. See n.36 above.
41. ibid., 652-3.
42. See p.229 above.
43. *Yale*, 324.
44. See p.229 above.
45. *Yale*, 324-5.
46. See *U.S. Reports 17*, p.564, and the bibliography there cited. The leading case on the subject is Phillips *v.* Bury.
47. *U.S. Reports 17*, p.566, and the bibliography there cited.
48. ibid.
49. ibid
50. ibid., 653.
51. *Universities*, III, 197.
52. ibid., I, 514; emphasis added.
53. ibid., III, 199.
54. ibid., III, 197.
55. ibid.
56. *Community*, 164.
57. *Universities*, II, 22.
58. ibid.
59. ibid., II, 64.
60. ibid., II, 66.
61. See the editor's addition to the bibliographical note in ibid., II, 22: Frederick II's constitution (1225) was found by A. Gaudenzi who published it in 1908; before this date, it was known only through its revocation in 1227.
62. For full details, see *Element*.
63. *MU*, 183.
64. *Indiculus*, 554-6, cited in *Spanish*, 268, in *MI*, 57-8; partial French translation in *Enseignement*, 7.
65. *Didascalicon*, bk. III, ch.7; *PL*, 176, 771C, translations in *Reader*, 580, and *MG*, 91; *Ecoles*, 115 and n.2. For qara'a see also pp.141ff.
66. *Metalogicon*, lib. I, cap. 24, p.53; a translation in *VLA*, 65-6.
67. cf. *Ecoles*, 115.
68. *LL*, s.v. *qara'a 'alaih.*
69. See above, p.142.
70. *Muntaẓam*, VI, 370 (12-13).
71. *Etudes*, 63-4.
72. ibid., 64-5.
73. ibid., 238-9.
74. ibid., 239 n.101.
75. See p.127 above.
76. *Mankhūl*, 504.
77. *Muntaẓam*, IX, 169 (1).
78. M. Grabmann, *Die Geschichte der scholastischen Methode* (=*GSM*), 2 vols. (Freiburg im Breisgau, 1909-11; reprint, Graz 1957). The first volume deals with 'Die scholastische Methode von ihren ersten Anfängen in der Väterliteratur bis zum Beginn des 12. Jahrhunderts', and the second with 'Die scholastische Methode im 12. und beginnenden 13. Jahrhundert'.
79. J. A. Endres, 'Über den Ursprung und die Entwicklung der scholastischen Lehrmethode' *Philosophisches Jahrbuch*, II (1889), 52-9.
80. ibid., 59: 'Die scholastische Methode ist also . . . ein Product der Scholastik selbst'.
81. ibid., 57.
82. ibid., 56. Long before Abelard, a disciple of the Sophist Protagoras had compiled 'a dull catalogue of mutually conflicting opinions in about the year 400 (B.C.)'. Protagoras 'is said to have been the first person to teach that it is possible to argue for or against any proposition whatsoever'. There is no question here however of a method of reconciling pros and cons. See *Education*, 83.
83. ibid., 58-9.
84. To be exact, up to the beginning of the 13th century; cf. n.78 above.
85. (Cambridge, Mass. 1927; reprint, New York 1957, 1961.)
86. *GSM*, I, 31 n.2.

87. ibid., I, 113; cf. 353, s.v. 'Sic-et-non Methode'.
88. ibid., I, 234-9.
89. ibid., I, 242-6.
90. ibid., I, 235.
91. ibid., I, 238-9.
92. ibid., I, 242.
93. ibid., I, 245.
94. ibid., II, 217.
95. ibid., II, 135, and 216 where Grabmann cites the *Tractatus de misericordia et iustitia* of Alger of Liége (d.1131 or 1132) as signifying the transition from the canonical works of Ivo of Chartres (d.1116) to the *Decretum* of Gratian. See also II, 215-16, where Grabmann considers the so-called influence of Abelard's *Sic et Non* on the *Decretum* of Gratian as 'certainly very much overrated' ('so wird dieser Einfluss sicherlich sehr überschätzt'.).
96. ibid., II, 217. See also the recent work of D. E. Luscombe, *The School of Abelard* (Cambridge, England 1969), p.222, showing Abelard's influence on the canonistic movement of the twelfth century, especially with respect to Gratian's successors.
97. ibid., II, 216 n.6.
98. See p.121 above.
99. *GFA*, 414; cf. *School*, 62.
100. In his study of the extant manuscripts of Abelard's *Sic et Non*, Father Buytaert states that the prologue is represented in these manuscripts in various lengths (op. cit., 418, 419, 422, 426), and that in two of the manuscripts the prologue is lacking altogether, but he believes this to be 'because both codices are deficient at the beginning'.
101. On the state of Abelard's texts, see *GFA*, loc. cit.: 'Of the *Sic et Non* ten manuscripts are known . . . in the strict sense of the word none of these ten codices is complete. Moreover, the earliest redaction of the work is not directly attested to by these manuscripts: the oldest or certainly the shortest redaction in existence, the one preserved by the manuscript of Tours, presupposes yet another, now lost.' See also *School*, chap. iii, 'The Diffusion of Abelardian Writings', 60-102, esp. 96: 'The sheer chaos of the varieties of the versions of the *Sic et Non* constitutes an editorial nightmare and it is no wonder that a modern editor should describe such volatile texts as "poor".'
102. The so-called 'logica nova'. See *GSM*, II, 219-20.
103. *Metalogicon* 1.2, c.4 (*PL*, cxcix, 860): 'nam sine eo (meaning Book VIII of Aristotle's *Topics*) non disputatur arte, sed casu'. Cf. *VLA*, 190: 'without this book (= eighth book of the *Topics*), one depends on chance, rather than on art, in disputation'.
104. cf. *GSM*, II, 17.
105. ibid.
106. ibid.; see also the English translation of the *Historia calamitatum* in *Adversities*, especially pp.12-20, for the section on his teacher William of Champeaux.
107. *GSM*, II, 17.
108. *OTT*, esp. 25-56.
109. *Quaestiones*, 1-67, which the author summed up in a book appearing the same year, *Glossators*, 81ff.
110. *OTT*, 26.
111. ibid., 28-9.
112. ibid., 29.
113. ibid.
114. ibid., 30.
115. ibid.; emphasis added.
116. ibid., 55.
117. cf. p.104 above, where al-Khaṭīb al-Baghdādī advised students to meet after class for this purpose.
118. *Faqīh*, II, 128 and 131.
119. See *Funūn*, *passim*, for mudhakara as conference; and p.400 *et passim*, for mudhakara as disputation. See also *Supplément*, s.v. *dhākara*, for the term mudhakara as conference and disputation.
120. *Quaestiones*, 35ff.
121. ibid., 35.
122. See p.114 above.
123. *Sommes*, 466f., cited in *Quaestiones*, 37.
124. *Mankhūl*, introduction of the editor, and 504.

125. *Quaestiones*, 5.
126. See p.128 above.
127. *Glossators*, 81.
128. *Quaestiones*, 35; cf. *Glossators*, 81.
129. For the text in French, see *Quaestiones*, 46.
130. *Disputationes*, xlv.
131. ibid.
132. *Quaestiones*, 1.
133. ibid.
134. *Glossators*, 81.
135. ibid., 82.
136. *Quaestiones*, 58-9; emphasis added.
137. S. Thomae de Aquino, *Summa Theologiae* (Ottawa 1941).
138. *Summa*, I, 2a: 'Utrum sit necessarium praeter philosophicas disciplinas aliam doctrinam haberi'.
139. ibid.: 'Videtur quod non sit necessarium praeter philosophicas disciplinas aliam doctrinam haberi'.
140. 'ad primum', 'ad secundum', etc.
141. cf. *Einführung*, 108.
142. '*multiplicationem inutilium quaestionum, articulorum et argumentorum*'.
143. See the Prologue to the *Summa* of St Thomas.
144. See *al-Wāḍiḥ*, fol.1b: yuwāzī fī 'l-īḍāḥi wa 'l-basṭi wa-tashīli 'l-'ibārati 'llatī ghamaḍat fī kutubi 'l-mutaqaddimīn, wa-daqqat 'an afhāmi 'l-mubtadi'īn.
145. ibid.: li-yakhruja bi-hādhā 'l-īḍāḥi 'an ṭarīqati Ahl al-Kalām wa-dhawī 'l-i'jām ilā 'ṭ-ṭarīqati 'l-fiqhīya wa 'l-asālībi 'l-furū'īya. My French colleague and friend, M. Louis Gardet, has rightly referred on more than one occasion to the need for studying works on usul al-fiqh as well as kalam in order to get a more complete picture of Islamic theology; see especially his *Dieu et la destinée de l'homme* (Paris 1967), Index I, 'termes techniques', 495, s.v.
146. *Wāḍiḥ*, fol.207a.
147. *GSM*, II, 384.
148. *Funūn*, 307 (5-6).
149. ibid., 450 (16).
150. ibid., 652 (1).
151. ibid., 652 (4).
152. ibid., 652 (5-6).
153. ibid., 509 (7-8); cf. *SCG*, liber i, cap. 7, p.41.
154. *Funūn*, 321 (6-7).
155. ibid., 289 (10-14).
156. *Wāḍiḥ*, fol.14b.
157. *Ibn 'Aqīl*, 424ff.
158. ibid., 434.
159. *Ādāb*, II, 120 *apud Funūn*; *Laṭā'if*, fol.84b; *Luqaṭ*, fol.2b.
160. *Dhail*, I, 190 (1).
161. *TSS*, II, 258 (18). For an explanation of this claim, see *Ash'arī*, 62, and n.2.
162. cf. his appraisal of his Hanbali companions and his defence of Ahmad b. Hanbal, cited in *Dhail*, I, 184 and 189, translated in *Ibn 'Aqīl*, 479-81.
163. As evidenced by the number of his teachers who were Mu'tazilis: Abu 'l-Qasim b. Barhan (d.456/1064), Abu 'Ali b. al-Walid (d.478/1086), and Abu 'l-Qasim b. Tabban (of whom very little is known); see ibid., s.v.
164. *Opuscules*, 93 (9-10).
165. The title of this work in the French translation of Léon Gautier (Algiers 1948) is: *Traité décisif sur l'accord de la religion et de la philosophie.*
166. His students after him became either Mu'tazilis or Hanbalis, and in one case Ash'ari.
167. More recently, a study was made of the historical precedents of Abelard's sic-et-non method by Ermenegildo Bertola, *Abelardo*, 255-280. The author concludes that the methodological precedents of the sic et non of Abelard show how the method of comparison of various and apparently opposed patristic texts was used for scriptural exegesis in the theological schools at the beginning of the 12th century, especially in that of Laon, a method which in turn derived from the exegetical methodology of the Carolingian period. It was a method used especially when dealing with difficult questions in biblical texts. To avoid disputes among the masters, there was recourse to the testimony of patristic texts. In the

school of Anselm of Laon, in the 12th century, the method was modified or perfected with respect to what it was in the Carolingian period. Whereas previously it was used for the literary exegesis of the biblical texts, with Anselm it was applied to individual questions. With Abelard the method underwent further development, becoming an instrument for systematic exegesis, not a purely textual one; in his *Sic et Non*, the comparison of patristic texts has a logical and systematic order. Thus E. Bertola traces the sic-et-non method back to a method of exegesis used at the beginning of the 12th century, which was derived in turn from a method of exegesis used in the 9th century. The author makes no mention of the canon lawyers Bernold of Constance and Ivo of Chartres; the legal antecedents discussed by Grabmann are passed over in silence.

168. *GSM*, I, 213.

169. ibid., I, 113 (see also p.353, 'Sachregister', s.v. 'Sic-et-non Methode': 'Anfänge bei Photius'.). On Photius's mission to the Muslims, see J. Hergenröther, *Photius*, I, 343, who states regretfully that Photius himself has not left us any report on this mission. For an analysis of the rules of reconciliation as elaborated by Photius, see ibid., III, 298-319.

170. For a ready list of such works, see *Translation*.

171. Constantine the African was born around 1010-15, in Central North Africa or in Sicily; he died in Monte Cassino about 1087. He was a Christian who knew Arabic, Latin and Greek, and spent most of his life travelling as a merchant or a physician in the Middle East. His early career is obscure; he became a monk and died in the Benedictine house of Monte Cassino in Italy, where he had translated a great number of Arabic works into Latin.

172. *'Uyūn*, 668.

173. *GAAN*, 120, no.211 (1). The work is cited in *Kashf*, I, 382, where the author is said to have died after 661/1263. It is likely that he died after 668/1270, since Ibn Abi Usaibi'a, who died in that year, does not have a date of death for the author in the biographical notice devoted to him; cf. n.93 above.

174. cf. *'Uyūn, passim.*

175. He refers to them not as 'the Saracens', but as 'the pagans', but John of Meung specifies 'Saracens' in his translation; see *Intellectuels*, 48.

176. The passage in question reads as follows in the translation of J. T. Muckle, *Adversities*, 64: 'God knows, I fell into such despair that I was ready to depart from the Christian world and to go to the Saracens, there, by paying whatever tribute was demanded, to live a Christian life among the enemies of Christ. I thought that they would be better disposed towards me as they would suspect from *the charges made against me* that I was not a Christian and so would believe that I would therefore be more easily induced to join their religion' (emphasis added). The translation in J. Le Goff of the same passage differs slightly and points out that the term was 'pagans' but specified as 'Saracens' by John of Meung (cf. previous note), in *Intellectuels*, 48: 'j'ai songé à quitter le territoire de la chrétienté et à passer chez les païens (aller aux Sarrazins, précisera la traduction de Jean de Meung) *pour y vivre en paix* et, moyennant tribut, vivre en chrétien parmi les ennemis du Christ' (emphasis added).

177. *Paris*, 35, and n.1. The term 'superior' was first employed by Pope Alexander IV in his Bull of 15 November 1256 regarding the Faculty of Theology, and was later applied to all three faculties. In the ceremonies and processions the three faculties usually came before the Faculty of Arts. cf. *Arts*, 497 n.1.

178. cf. *RU*, 5.

179. *Salerno*, 171ff., 180-1.

180. *Universities*, I, 124.

181. ibid., I, 261; emphasis added.

182. ibid.
183. *Arts*, 14-15.
184. ibid.
185. ibid.
186. ibid., 16.
187. ibid., 20.
188. ibid.
189. ibid., 29.
190. *Method*, 647 and n.36; *Interaction*, 297.
191. *Method*, 649.
192. Arabic MS. 3901.
193. See the manuscript text in *Handlist*, Plate no.126; emphasis added.
194. *Universities*, I, 109.
195. ibid., I, 124; emphasis added.
196. ibid., I, 110.
197. ibid., I, 110 n.3 in brackets, 2nd column, editor's note by A. B. Emden; emphasis added.
198. *Supplément*, s.v. *sharṭ* (*'ilm ash-shurūṭ*: *l'art de dresser des contrats*).
199. cf. *Studien*, II, 233 n.1.
200. *Kashf*, s.v. *shurūṭ*.
201. *Supplément*, s.v. *waththaqa*: '*(l'art de) dresser des actes, des contrats*'.
202. *Kashf*, 1045.
203. ibid.
204. ibid., 398.
205. See p.201 and n.254 above.
206. *Arezzo*, 427.
207. ibid., 462.
208. ibid., 432.
209. *Arts*, 34; emphasis added.
210. *Wafayāt*, II, 95: yaqūlu 'sh-shi'ra 'alā ṭarīqati 'l-fuqahā'.
211. *GAL*, I, 277, Suppl. I, 488.
212. *Extraits*, 239-40.
213. ibid., 245.
214. *Baḥth*, 336ff. Farhat's definition is taken from the grammar of Ibn al-Hajib (d.646/1248). See also *Kashshāf*, 1045 s.v. '*āmil*: huwa 'inda 'n-nuḥātimā aujaba kauna ākhiri 'l-kalimāti 'alā wajhin makhṣūṣin mina 'l-i'rāb (according to the grammarians, the regent is that which necessitates the ends of words to take a particular syntactical inflection). For Sibawaih, see *GAL*, I, 101 ('Sein *Kitāb* ist die älteste zusammenhängende Darstellung der arabischen Grammatik'); on the regime, see his *Kitāb* (Cairo), II, 3 *et passim*. For the regent, cf. also *Grammar*, II, 113, *Remark b*.
215. See *GAL*, I, 287, Suppl. I, 503.
216. Religious law in Islam encompasses religious matters, as well as matters political, social, economic, criminal, civil, and ethical. A fatwa may be in answer to questions involving these matters; by extension it may be in answer to other questions, for instance, grammar.
217. *Universities*, I, 281, notes 1 and 2.
218. cf. *Education*.
219. *Ecoles*, 67.
220. ibid., 68.
221. *Universities*, I, 292.
222. ibid., I, 304.
223. ibid., I, 281-2.
224. ibid., I, 287.
225. ibid., I, 143. Powicke points out (loc. cit., n.1) that G. Manacorda (*Scuola*, I, esp. 198-204) strongly opposed Rashdall's view. Manacorda believed that the licentia docendi existed everywhere as the link between the cathedral schools and the universities, whether at Paris, Bologna or elsewhere. While Powicke tends to sympathize more with Manacorda than with Rashdall in this regard (cf. *Universities*, I, 145 n.3), he does not subscribe to his conclusion as a 'universal truth'; see Powicke's 'Additional Note to Chapter I', ibid., I, 21, where he says Manacorda's conclusion 'that the medieval universities were in origin "trasformazioni della scuole vescovili" [i.e., developments from the cathedral schools] cannot be literally accepted as a universal truth'. Powicke goes on to say that though this was true of Paris, 'it cannot be established, on existing evidence, in the cases of Oxford and Montpellier', and 'the masters who taught at Bologna had (no) connection with an episcopal school'.
226. ibid., I, 145.
227. ibid., I, 221-3.
228. ibid., I, 336-7, and n.1.
229. ibid., III, 38.
230. ibid., II, 122.

231. ibid., II, 124.
232. ibid., II, 26.
233. ibid., I, 82-3.
234. ibid., I, 591-2.
235. *RU*, 14.
236. *Lehrwesen*, 21.
237. *Abelard*, 26.
238. *Disertaciones*, I, esp. p.243 and end of note 2 on following page.
239. *Universities*, I, 3 n.1 (by F. M. Powicke).
240. The ijaza has traditionally been connected with hadith and discussed as a certificate of authorization to transmit hadith, rather than as a licence to teach law, or to issue fatwas for the instruction of the laity. Julian Ribera, the first to discuss the matter at length, treated it as authority for transmitting hadith: the ijaza or licence, he said, 'is not a formal document in which the fact of teaching is recorded, but rather a document of authority granted by the master in favour of his disciple' (no es un acta donde se consigna el hecho de la enseñanza, sino un documento de autoridad expedido por el maestro en favor de su discípulo). See *Enseñanza*, 335 (17-19). The present writer has heretofore treated the ijaza as a licence to teach a book or books, not a field of knowledge; see *Law*, 79 (26-7); but this is not true of the field of law.
241. *Universities*, I, 226, 231 for the whole ceremonial involved in becoming a professor at Bologna; and ibid., I, 283-7, and *RU*, 370. For an example of an inaugural lecture in Baghdad, see *Funūn*, 707; also, ibid., 639, for the disputations which took place on the occasion of the mourning ceremony ('aza') on behalf of al-Kalwadhani.
242. The books on law are divided into two sections: man's duties toward God, 'ibādāt, and man's duties toward man, mu'āmalāt.
243. *Paris*, 160.
244. ibid.

Conclusion

1. *MI*, 341-2; emphasis added.
2. See his works, *IW*, *IEE*, and *AME*.
3. See *Influence*, 84.
4. *Jurisprudence*, 134. I am indebted to Professor Damaska, of Yale University School of Law, for bringing this work to my attention.
5. *Extraits*, 505-6; emphasis added.
6. *Formation*, 230.
7. *Religion*, 229.
8. Such factors were the subject of a symposium at the University of Bordeaux in 1958; see *Classicisme*.
9. My experience here agrees with that of my friend and colleague, Professor W. Montgomery Watt; see his *Ijtihad*.

Appendix A

1. *Jāmi'āt*; *ME*; *Bibliothèques*.
2. *HIO*, 40.
3. *ISL* and *EMI*.
4. *Universities*, I, xxxix.
5. ibid., I, xli.
6. ibid., I, 9 n.3.
7. ibid., II, 120.
8. *Disertaciones*, I, 243 n.2.
9. ibid., 334-40.
10. *Universities*, I, 3 n.1.
11. See p.275 above.
12. *Disertaciones*, loc. cit.
13. Among them Goldziher; see section 4 below.
14. *CIA*, 253 n.3.
15. ibid., 254 n.3 and 255.
16. *Ash'arī*; and *Ibn 'Aqil*, chapters III and IV.
17. *CIA*, 260.
18. ibid., 256.
19. ibid., 260.
20. ibid., loc. cit.; emphasis added.
21. ibid., loc. cit.; emphasis added; instead of 'Mongol', read 'Saljuq'.
22. ibid., 257.
23. ibid., 258-9.
24. For the Latin text, see ibid., 259 n.4, quoted from Felix Faber, *Evagatorium*, ed. Hassler, III, 84.
25. *CIA*, 259-60.
26. ibid., 260.
27. ibid., 263-4.

28. ibid., 265.
29. *Dogme*, p.v.
30. *Vorlesungen.*
31. *VIF.*
32. *Vorlesungen*, 120; *Dogme*, 98; *VIF*, 118; emphasis added.
33. *MIL*, 20, and n.1, for the passage in question, original text and its translation.
34. *Luma'*, 7 (13), 8 (17), 15 (24, 26), 18 (1), 46 (4).
35. *Dhail*, I, 26; *Dhail (F)*, I, 20.
36. For the terms of the waqf deed, see *Muntaẓam*, IX, 66; no mention of the terms in *Kāmil*, *Mir'āt*, or *Bidāya*. For details concerning the waqf, see *Muntaẓam*, VIII, 256; less detail in *Mir'āt*, fols. 121b-122a; no mention in *Kāmil*, *Bidāya*, sub anno 462 H. For an English translation of the extant deed, see *MIL*, 37.
37. *EI*, s.v. 'masdjid', section F, 4a, p.357.
38. Instead of: 'containing'.
39. ibid., loc. cit., section F, 3, p.354a.
40. ibid., loc. cit., p.353b.
41. ibid., section F, 4a, p.358a.
42. ibid.
43. The section of Pedersen's article in *EI* on the 'Masdjid' dealing with the madrasa was abridged for use in *SEI*, s.v. 'Madrasa'.
44. *Bibliothèques*, 153-4.
45. ibid., 161; cf. *Monde*, 307.
46. *Bibliothèques*, 154.
47. ibid., 155ff.
48. ibid., 161.
49. *MIL.*
50. *Ibn 'Aqil*, chapters II and III.
51. See p.25 above.
52. cf. *Ibn 'Aqīl*, 475.
53. *Irshād*, XI, 227; cf. p.21 above.
54. See p.81 above.
55. See *Ash'arī*, esp. p.80.
56. *MIL*, 54.
57. ibid.

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